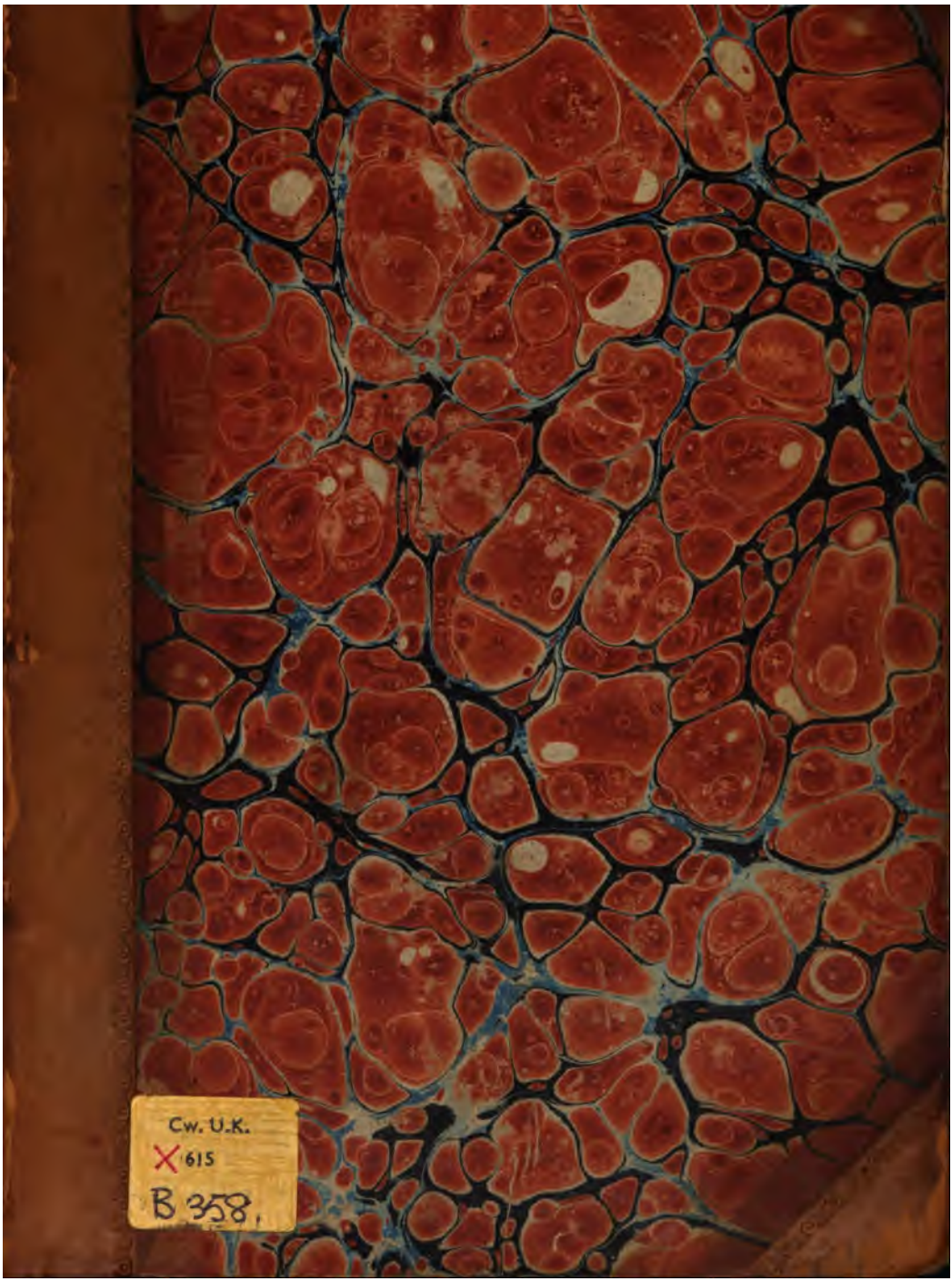

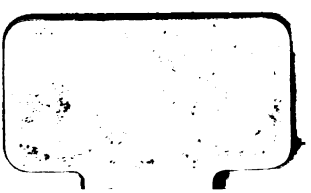

A

TREATISE

ON

THE VALUATION OF PROPERTY

FOR THE

POOR'S RATE;

SHOWING THE METHOD OF RATING

LANDS, BUILDINGS, TITHES, MINES, WOODS, RIVER AND CANAL TOLLS, AND PERSONAL PROPERTY;

WITH

AN ABSTRACT OF THE POOR LAWS

RELATING TO

RATES AND APPEALS.

BY J. S. BAYLDON,

AUTHOR OF "RENTS AND TILLAGES."

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PREFACE.

THE poor-rates of England have increased so much of late years, and are become such a burthensome tax on property, that the principles on which they are founded and computed are, at the present period, a matter of anxious inquiry. No work, exclusively on this subject, has hitherto appeared. Small patches on the liability of property to the poor's rate may be found in law-books; the most important of which are selected and blended with practical information in the present undertaking. The most recent decisions of cases on the poor-rates are abstracted, and it has been humbly attempted by the

Author to render this Work useful to persons concerned in the management of poor-rates, and to rate payers in general.

Wath, near Rotherham,
Jan. 26. 1828.

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A TREATISE

ON

THE VALUATION OF PROPERTY

FOR

THE POOR-RATES.

ORIGIN OF POOR-RATES.

No law for relieving the poor before the 14th Eliz.

THE first act of parliament for the general relief of the poor, was passed in the fourteenth year of the reign of Queen Elizabeth; before that time their wants were chiefly supplied by charitable institutions, and the donations of the benevolent. Monasteries and hospitals were richly endowed for supporting the clergy and providing for the poor; and the property of persons

dying intestate was vested in such institutions for the same charitable purposes.

First occasion for the general tax.

At the commencement of the Reformation, in the reign of Henry the Eighth, the monastic clergy were possessed of about one-fifth of the revenues of the kingdom, which that monarch seized and distributed amongst his courtiers and flatterers, as a reward for their servility. The poor soon felt the inconvenience of being deprived of their support, and the country, in consequence, became so much infested with beggars and indigent persons, that it was found necessary to provide for them by a general tax.

The poor supported by charity.

During the recess, betwixt the suppression of the monasteries, and the commencement of the operation of the poor laws, paupers were restrained from begging out of their own district or parish, and were provided for by voluntary contributions collected in the churches. The clergy were directed, by government, to exhort their parishioners to be liberal and bountiful. Once a-year, at the conclusion of divine

service, it was the duty of the collectors to write down what each person was willing to give for the support of the poor in the year following. If any person of ability refused to contribute, without assigning a sufficient reason, it was the minister's duty to entreat him to be charitable according to his means; and if he refused, the minister would acquaint the bishop of the diocese, who would further exhort him; and if he were still obstinate in refusing to give, the bishop would bind him over to appear at the sessions. The justices would then endeavour to persuade him; and in case of refusal, would compel him to pay what they deemed sufficient.

Why a rate was first made.

This state of things suggested the propriety of making a rate on the occupiers of all descriptions of property affording profit; with a view to oblige all persons to contribute towards the support of the aged and infirm, according to their possessions. Thus endeavouring to make all charitable alike, as far as law can accomplish that object.

First act for making a rate.

In the fourteenth year of Queen Elizabeth, a statute was passed for a general assessment throughout England, which soon after received some amendments and additions; and in the forty-third year of her reign, an act of parliament was passed (including former acts) for the "Relief of the Poor," and setting to work those who were able; which act has not been wholly repealed, but the most important part of it has continued in force to the present time.

ABSTRACT

OF

LAWS ON POOR-RATES.

Preface.

As the rateability of property to the relief of the poor is grounded on the various acts of parliament, which have passed at different periods, since the fourteenth year of the reign of Queen Elizabeth; it will be necessary, before entering on the practical mode of valuation, to give a brief outline of those parts of the acts, which are not repealed.

Appointment of overseers.

The act of the forty-third of Elizabeth provides, that the churchwardens, and four, three, or two substantial householders, shall be nominated yearly in Easter week, or within one month after Easter,* by two or

* Altered by 54 Geo. 3. to March 25., or within fourteen days after.

more justices of peace in the same county, as overseers of poor of the parish in which they reside, and they, or the greater part of them, shall take order, by the consent of the magistrates, for employing those poor people who are able to work, and have no means of maintenance, and for relieving the infirm. By raising "weekly, or otherwise, (by taxation of every inhabitant, parson, vicar and other, of every occupier of lands, houses, tithes impropriate, propriation of tithes, coal mines, or saleable underwoods in the said parish, in such competent sum and sums of money as they shall think fit,) a convenient stock of flax, hemp, wool, thread, iron, and other necessary ware and stuff, to set the poor to work; and also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind, and such other among them, being poor and not able to work; and also for the putting out of such children to be apprentices, to be gathered out of the same parish, according to the ability of the same parish."

Property liable to be rated.

The overseers shall meet, at least, once a month, in the church, to consult on the business of their office; and shall, within four* days after the end of their year, deliver up to the justices a correct account of monies received and paid, and other matters and things unsettled, and pay over the balance in hand to the succeeding overseers. In default of absence from meetings, or negligence of duty, to forfeit twenty shillings. If the justices perceive, that the inhabitants of any parish are not able to levy among themselves sufficient sums of money for defraying the necessary expences of the poor, they may assess any other parish within the same hundred, or within the limits of their jurisdiction, in such sum of money as may be deemed requisite to make up the deficiency. And if the justices shall find that none of the parishes within the hundred, are able to contribute more than sufficient for their own poor, they shall, at the general

Overseers to account once a month.

Rating in aid.

* By 17 Geo. 2. the time allowed for paying the balance and delivering up the books is extended to fourteen days.

quarter sessions, assess any other parish within the county, at their discretion.

Non-payment of assessment.

In default of any person rated not paying his assessments, the justices have power to grant a warrant to the overseers, to levy the same by distress and sale of the offenders' goods; and in defect of such distress, to commit him to the county gaol until they are paid.

Overseers refusing to account.

The magistrates have power to imprison, without bail or mainprize, all overseers who refuse or fail to account, until they have made out true accounts, and paid the balance.

Houses may be built on the waste.

In order to provide the poor with suitable dwellings, the overseers may, by leave of the lord of the manor, and agreement with him in writing, build houses on the waste or common, for the exclusive occupation of the poor of their parish.

Persons aggrieved may appeal.

If any person find himself aggrieved by the assessment, or by any act of the overseers or justices, he may appeal to the quarter sessions, and the decision there given will be final.

The father and grandfather, the mother and grandmother, and the children of every poor person unable to work, being of sufficient ability, shall maintain every such poor person, in that manner, and according to that rate fixed by the justices of the county where such sufficient person dwells, or forfeit twenty shillings.

Near relations to support each other.

If any parish extend into more counties or liberties than one, the overseers or justices shall intermeddle only in so much of the parish as is in their liberty; and yet the overseers of the whole parish, without dividing themselves, shall act together, and make an account for the justices of each liberty.

One parish in two counties.

ON PUBLISHING THE RATE.

17 Geo. 2.

In this act it is stated, that great inconveniences having arisen from the rates not being sufficiently published, it is enacted, that the overseers of the poor shall give public notice in the church, of every rate

The rate to be published the next Sunday after it is allowed.

for the relief of the poor, allowed by the justices, the next Sunday after the same shall have been allowed; and that the rate will be null and void if not published on the day appointed. Unless this form be strictly observed, the payment of rates cannot be enforced, although no appeal may have been entered at the sessions.

The rate may be inspected.

The overseers shall permit any of the inhabitants to inspect the rate at all reasonable times for one shilling; and shall, upon demand, give copies of the same, or any part thereof, at the rate of six-pence for every twenty-four lines, under the penalty of twenty pounds, payable to the person aggrieved.

IMPROVED WASTES.

17 Geo. 2. c. 37.

Wastes, to what parish rateable.

This act provides, that when any dispute or uncertainty shall arise, as to what parish or liberty any improved waste lands shall be rated, all the occupiers thereof shall be assessed to the parish or place which lies

nearest such lands. If any further dispute arise, the justices, at their next general or quarter sessions, shall determine the same, and their decision shall be final.

OVERSEERS' DUTIES.

Officers to deliver up accounts.

The 17 Geo. 2. c. 38. enacts, that overseers of the poor shall yearly, within fourteen days after other overseers are appointed to succeed them, deliver up into their hands, a book of accounts of all monies received and paid, or rated and assessed, but not received; and also of all goods, chattels, and other things in their hands, or in the hands of the poor, concerning their office, and pay over the balance in hand. This account to be verified upon oath (or the affirmation of Quakers), before one or more justices of the peace, who are to sign it at the foot without fee or reward.

Rate-books to be preserved.

The books of accounts are to be carefully preserved in some public, or other place in the parish, by the overseers; who shall permit any person therein rated to

inspect them at all seasonable times, on payment of sixpence for each time; and shall, upon demand, give copies at the rate of sixpence for every three hundred words.

Punishment of overseer on refusing to give up monies, &c. in hand.

In case the overseer shall refuse or neglect to give up the monies, goods, and accounts, as above specified, two or more justices of the peace shall commit him to the common gaol until he render satisfaction.

In case an overseer shall die or remove.

If any overseer shall die, or remove from the parish or liberty for which he was appointed, or become insolvent before the expiration of his office, two justices are to appoint another overseer, who is to continue in office until new ones are appointed. In case of removal, the overseer shall deliver up his accounts, and all other things concerning his office, to one of the overseers who was appointed with him; in default thereof, he will be subject to the penalties before-mentioned. And in case of death, his executors or administrators shall, within forty days after his decease, deliver over all things concerning his office

to some overseer of the same place, and pay the balance of his accounts, if there be any due, before any of his other debts.

ON APPEALS AGAINST RATES.

Persons aggrieved by the rate may appeal.

" In case any person or persons shall find him, her, or themselves, aggrieved by any rate or assessment made for the relief of the poor, or shall have any material objection to any person or persons being put on, or left out of, such rate or assessment, or to the sum charged on any persons therein, or shall have any material objection to such account as aforesaid, or any part thereof, or shall find him, her, or themselves aggrieved by any neglect, act, or thing, done or omitted by the churchwardens and overseers of the poor, or by any of His Majesty's justices of the peace; it shall and may be lawful for such person or persons, in any of the cases aforesaid, giving reasonable notice to the churchwardens or overseers of the poor of the parish, township, or place, to appeal to the next general

or quarter sessions of the peace of the county, riding, division, corporation, or franchise, where such parish, township, or place lies; and the justices of the peace there assembled, are hereby authorised and required to receive such appeal, and to hear and finally determine the same; but if it shall appear to the said justices, that reasonable notice was not given, then they shall adjourn the said appeal to the next quarter sessions, and then and there finally hear and determine the same; and the said justices may award and order to the party, for whom such appeal shall be determined, reasonable costs."

A rate may be altered without quashing the whole.

Upon appeals against rates, the justices have discretionary power to amend such parts as shall appear to them to be unequally assessed, without quashing the whole rate. But if, upon an appeal against the whole rate, it shall be found necessary to quash and set aside the same, then the justices can order an entirely new and equal rate to be made.

When any person shall quit, and another shall enter to buildings or land, each person must pay the rates according to the respective time of his occupation. In case of dispute, the proportions of each occupant to be ascertained by the justices. Where premises are unoccupied, the rates upon them commence from the time of entry. On change of occupation.

Copies of all rates and assessments are to be written in a book, provided and signed by the overseers, within fourteen days after all appeals against such rates are determined, and kept by them and their successors for the inspection of the inhabitants. Copies of rates appealed against to be kept for inspection.

In the preamble of 41 Geo. 3. c. 23. it is observed, that in the act of 17 Geo. 2. power is given to justices of peace at their quarter sessions, upon appeals against rates and assessments, to amend the same where they shall see just cause of complaint; and in case an appeal shall have been laid against the whole rate, to quash it entirely, if they think fit. The operation of this law having put the overseers to much inconvenience, by preventing them from collecting On assessments bein delayed by appeals.

sufficient money for the maintenance of the poor during the question of appeal, it is enacted, by the 41 Geo. 3. c. 23., that, upon all appeals against the rate, the court of general or quarter sessions shall, where they see just cause of complaint, amend the same, either by inserting therein, or striking out, any person's name, or by altering any sum, or in any other manner the Court shall think proper, and without quashing or wholly setting aside the rate. The Court has, however, power to quash the whole rate, if there appear to be urgent cause; but the assessment may be gathered on the rate, the same as if no appeal had taken place, until the question of its validity be decided.

Rates must be paid during appeal.

The assessments may be recovered of the appellant by distress, if he refuse to pay them, notwithstanding he may have given notice of appeal against the rate; but he cannot be compelled to pay a greater amount of assessment, than that in which he was assessed in the last effective rate, until the appeal be determined.

In case the court of quarter sessions shall order any rate to be quashed, the same court can decide that any sum of money charged in such rate shall not be paid; after which no proceedings shall be commenced for enforcing payment, and those which are commenced, shall not be further prosecuted.

Justices may order the payment of rates to be suspended.

All notices of appeal against rates, or against the accounts of the overseers, shall be given in writing, and signed by the appellant, or his attorney on his behalf; and such notices shall state the particular causes or grounds of appeal; and shall be delivered to, or left at the houses of, two of the overseers.

Notices of appeal.

The court of quarter sessions shall not examine or enquire into any other cause or grounds of appeal, than such as are specified in the notices.

With the consent of the overseers, signified by them or their attorney, in open court, and with the consent of any other persons interested therein, the Court may proceed to hear and decide upon appeal,

The Court may hear appeals without notice, by consent of both parties.

although no notice shall have been given in writing; and also, with the like consent, the Court may hear and decide upon grounds of appeal, not stated, or mis-stated in a written notice of appeal.

Notice to be given to all persons interested in the appeal.

If any person appeal against a rate, because any other person is rated therein, or omitted; or because any other person is rated or assessed at a greater or less sum than he ought to be; or for any other cause that may require alteration in the rate; the appellant shall give notice in writing, not only to two of the overseers, but also to other persons concerned in the event of the appeal, and such other persons shall, if they desire, be heard upon the appeal. The justices at the quarter sessions can then alter and amend, by their proper officer, such parts in the rate as they shall think proper.

In case the rate be altered, the money overdrawn to be repaid.

If the Court shall order any person's name to be inserted in the rate, and assessed therein, or shall increase the rate of others, the overseers can recover the same according to the alteration of the justices; and in

case any person's name shall be struck out, or any sum lowered, the court of quarter sessions shall order the money, which ought not to have been recovered, to be repaid, together with reasonable costs, charges, and expences occasioned by having been required to pay the same.

The succeeding overseer to reimburse his predecessor.

Where it may have happened that overseers have not been able to collect money sufficient to relieve and maintain the poor, but have actually advanced money for that purpose, the succeeding overseers may reimburse them by assessment. In case this provision is not complied with, within fourteen days after demand in writing has been made, such preceding overseers may apply to the next quarter sessions, giving due notice in writing to their successors of such application. The Court shall then hear and determine the same.

Appeals must be made at the next *quarter* sessions.

The 17 Geo. 2. provides, that appeals against rates must be made at the next *general* or *quarter* sessions. On this head it has been decided, that where both general and quarter sessions are held, the appeal

must be entered for the quarter sessions. In a case tried before Lord Ellenborough, a motion was made for a mandamus, to enter continuances upon an appeal against a poor-rate; and the question was, whether in London, where there are eight sessions every year, four general quarter sessions, and four general sessions, a party is bound to appeal to the general sessions, if they occur first after the rate; or whether he is entitled to pass over the general sessions, and appeal to the next general quarter sessions? The general quarter sessions were held on the day after the rate was published in the church, and as there was no interval, it could not be expected that the appeal should be made at those sessions. By the statute 43 Eliz. if any person shall find himself aggrieved, the justices of the peace, at their general quarter sessions, shall take such orders therein as to them shall be thought convenient. This statute, therefore, gave the appeal to the quarter sessions indefinitely, without even limiting it to the next which should occur. By the statute

17 Geo. 2. a person aggrieved may appeal to the next general or quarter sessions of the peace for the county, riding, division, corporation, or franchise, where the township, parish, or place for which the rate is made lies; but if it shall appear that reasonable notice was not given of the appeal, the justices shall adjourn it to the next quarter sessions, and then finally hear and determine it; and the said justices may award to the party, for whom the appeal shall be determined, reasonable costs. This statute, therefore, limits appeals (in terms) to the next general or quarter sessions; and the question is, whether the word "*general*" is used with a view to those places which have both general and quarter sessions; or whether it is not used as another word for quarter sessions, in contradistinction to a special sessions, every quarter sessions being a general sessions? The Lord Chief Justice further stated, that the bench were of opinion that the latter is the true construction; and that an appeal to the next quarter

sessions, notwithstanding the intervention of a general sessions, is in time.

Appeals must be made at the *next* quarter sessions.

By the 43 Eliz. an appeal might be made against a rate at any quarter sessions after the rate was published. But this provision was found to admit of too much delay. The appeals were sometimes entered against rates which had been made and gathered so long before, that the overseers who had to defend the rate were out of office, and might be dead or out of the country. To remedy this defect, it is enacted by the 17 Geo. 2. that the appeal shall be made to the *next* general or quarter sessions; by which is meant, not that which may take place in a few days, but that which allows a reasonable time for a notice to be given before their commencement. The time is not specified in any act relating to appeals; *reasonable* notice is required, and the justices at the sessions are to decide on its sufficiency in that respect, and their decision is, in some measure, guided by the practice of the court. "On a motion to quash two orders made by the justices of

peace of Berkshire at their quarter sessions, on an appeal against the poor's rate, one objection was, that it appeared that notice of the appeal was not given till the day before the sessions began, whereas there should have been eight days' notice by the practice of the sessions; that the justices, with a view, perhaps, to supply the defect of notice, adjourned the appeal by the first of their orders to the next day, and directed the overseers to attend them then with the rate; that on the next day, accordingly, they went on to hear, and made the second order on the merits, whereas they ought, as was insisted, wherever there was not proper notice, to adjourn the appeal to the next sessions. Sir Richard Lloyd, in showing cause against the rule as to the first objection, observed, that the 17 Geo. 2. makes the justices sole judges of what notice is reasonable, and they had thought this so; besides, this notice was the best that could be given from the nature of the case, the rate being made on Saturday, and published on Sunday; notice of appeal was given on

Monday, and on Tuesday the session was held." Justice Wright observed, that to these orders several objections have been taken: first, that by the first order, the justices appear to be convinced that proper notice of the appeal had not been given; yet, instead of adjourning the consideration of it to the next sessions, as the act directs, where there shall not be sufficient notice, they take upon themselves to direct a notice, and adjourn to the next day only. This is the objection; but, in answer, it is said, the notice directed is only to attend with the rate; the notice of appeal they adjudged sufficient; and the adjourned day was not another, but the same sessions.

More persons than one may join in one notice of appeal.

As many persons as have objections against the rate, may join in one appeal and one notice. Each person's ground of appeal, and the names of those occupiers who are supposed to be over-rated, under-rated, or omitted, must be stated in the notice; for the court of sessions will not enter into any other questions on the validity of the rate, than those which are specified in the

notice. Each grievance and objection must be clearly and precisely stated, in order that the overseers may have a reasonable time to prepare their defence.

Grounds for moving an appeal.

The principal grounds for moving appeals against poor-rates, are, — for not being made by proper persons; nor duly allowed by the justices; nor published according to the act; nor made on a proper principle; that certain property, liable to be rated, is omitted, over-rated, under-rated, or not sufficiently described; that the rate is unequal; includes property not rateable; is defective in form; and is made for a greater sum, or for a longer time, than is necessary.

PERSONS AND PROPERTY

LIABLE TO BE RATED.

Authority for making poor-rates.

THE general provision for the maintenance of the poor is founded on the 43 Eliz., which enacts, that "the churchwardens and overseers of the poor of every parish, or the greater part of them, shall, by and with the consent of two or more justices in the same county, dwelling in or near the same parish or division where the same parish doth lie, raise weekly or otherwise, by taxation, of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, propriations of tithes, coal-mines, or saleable underwoods, in the said parish, to be gathered out of the same parish, according to the ability of the same parish."

Many acts of parliament have passed for amending the poor laws, since the 43 Eliz., none of which affect the above clause, but frequently refer to it as the general precedent for the description of persons and property liable to be assessed. Several other parts of the act have been repealed, and amendments made to suit the convenience of the times, which will be noticed in their proper places.

Churchwardens and overseers to make the rate.

By the above clause, the power of making the rate is vested in the churchwardens and overseers, or the major part of them; and they are at liberty to exercise that power without the consent of the inhabitants. When poor-rates were first introduced, the poor were not in need of so much assistance as they are at present, and, consequently, the equality of rates was less regarded. Churchwardens and overseers then made rates themselves, without entering minutely into the relative value of each person's occupation; but since poor-rates have risen to a burthensome tax, and increased beyond what was contemplated by

the act, its provisions do not apply to the change of circumstances and times; and it is now material that the valuation of property should be more accurately ascertained.

New rates required when improvements are made.

New rates are required when any material alteration has taken place in the value of property, or when the old rate is found unequal. Land becomes more valuable, and, of course, rateable in a higher degree, when buildings are erected upon it, reservoirs, gardens, or other improvements made; and the more alterations are made in townships, the oftener new rates are required.

Overseers do not make rates themselves, but employ valuers.

Although churchwardens and overseers are still authorized to make new rates without the concurrence of the inhabitants, they generally take the opinion of the whole township, and throw the responsibility of making an equal and effective rate on two indifferent persons, who are appointed at the vestry meetings. Besides, the churchwardens and overseers, being occupiers of rateable property in their own parish, are not thought proper persons, nor are they

often found competent to make an equitable valuation for the rate. Their duty in this respect is now commonly confined to forming the assessments from the rate made by the valuers, getting them signed by the justices, and collecting them.

Assessments to be signed by two or more justices.

The above clause also provides, that the rate shall be made with the consent of two or more justices; by which is meant, that when the overseers see cause to make a new rate, or an assessment upon an old one, no collection shall be made till the signatures of the magistrates are obtained. In doing this the justices act ministerially, and are not to refuse on account of its being improperly prepared; nor have they occasion to enquire into the equality of the rate, but are required to sign it as a matter of form. But if the overseers disagree, and cause more rates than one to be made, and presented to the justices for their sanction, the latter may select that which appears most equitable. The statute provides, that the rate shall be made by the overseers, or

When more than one rate is made.

the major part of them; therefore one overseer cannot legally order a new rate.

Property is rateable in the parish where it is situate.

The occupiers of property are to be taxed according to their visible ability within the district for which the rate is made, and not for what they may possess elsewhere, unless in their occupation, and then to be rated in respect of such property, to the township or district wherein it is situate. This rule is founded on the above statute, wherein it is stated that the tax must "be gathered out of the same parish, according to the ability of the same parish." Thus the rate of each district must be confined to property within its own limits. If it were otherwise, those who occupy property in one parish, and reside in another, would be taxed in each for what they possess in both, which would be a payment of double rates, which is unreasonable, and against the principle of the statute.

Inhabitants rateable according to ability.

The rates are to "be raised by taxation of every inhabitant," and other occupiers of lands, houses, &c. according to ability. From this it is inferred, that inhabitants,

and all persons holding property, yielding, or likely to yield, profit; or poor persons occupying cottage houses, for which they themselves are the responsible tenants, are liable to be rated. Persons are rateable in respect of the rent or annual value of their respective occupations; and it is decided, that persons, however poor they may be, are liable to be rated if they hold houses or land for which they pay rent. For it is held, that persons able to pay rent are able to pay rates, the tax operating on all property in diminution of rent, and depending, in a great measure, on the fact of annual value being yielded by the occupier to the proprietor. If it were not so, property occupied by persons of low degree would be exempt from rate, and would, in consequence, yield a higher proportion of rent than other property; thereby giving the landlord an undue advantage.

Rate on cottagers.

The tax is personal in respect of the visible estate of the inhabitants; and any person refusing or neglecting to pay his assessment, after being legally demanded,

Poor-rates are a personal tax in respect of real property.

is liable to have the amount levied by distress and sale of his goods and other personal property.

Personal property rateable.

By the term "inhabitant," the statute is construed to imply personal as well as real property; because the inhabitant of any parish, who occupies no real property within it, could not be taxed according to his ability, unless his personal property were included. But the law is, in general, evaded in this respect, by the general concurrence of the inhabitants. The rating of personal property is attended with great difficulties, and liable to much discussion and litigation. Its annual value is easily misrepresented by the occupier, and the rate would require alteration as often as any alteration took place in his circumstances. The attempt to ascertain increased capital and stock in trade would be very obnoxious to tradesmen, who, in general, are anxious to prevent their private affairs from being publicly exposed. For these, and other obvious reasons, the rate is commonly confined to the annual value of real property, imposing

Personal property not usually rated.

a higher proportion of assessment on buildings appropriated to trade, to remedy, in some measure, the omission of personal property.

General principles of rating.

The general principles on which the rateability of both real and personal property depend, may be comprehended under the following qualifications: — The property rated must be within the meaning of the statute, and within the district for which the rate is made; it must be occupied, and must yield, or be likely to yield, a profit; it must not be rated twice. Unless all these circumstances concur in the subject under consideration, it is not rateable.

ON POOR RATES

AS CONNECTED WITH RENTS.

Poor rates payable out of the annual value of real estate.

ALTHOUGH poor-rates are exacted from the occupiers, they are, in effect, borne by the proprietor out of his property in the occupation of another. Lands or buildings are let for less rent in consequence of the tenant having to pay the poor-rates; or, in other words, the landlord would require more rent by the average amount of poor-rates, if he were to engage to pay them. They are part of the surplus profits of farms, after payment of expences of management; and being payable before rents, operate in diminution of their amount. Both form a tax upon the balance, after the expences of cultivation are deducted from the value of produce. Therefore rates laid upon lands or buildings operate the

Poor rates operate the same as additional rents.

same with the tenant as so much additional rent paid to the landlord; it being quite immaterial to the tenant whether they are paid to the landlord, or to their proper destination, the overseer. Let it be supposed that a farm be extra-parochial, or free from rates, under a rack-rent of 100*l.* a year, and that, on some account, rates are to be imposed in future to the amount of 20*l.* a year. The occupier will, of course, have them to pay; but being already under as high a rent as the farm will fairly yield, the rent must be reduced to 80*l.* a year, or the farmer will suffer a loss of capital of 20*l.* a year. If the rent in consequence be reduced to 80*l.* a year, the landlord in effect deducts 20*l.* a year from his share of the profits, to enable the farmer to pay the poor-rates. The case is stronger in regard to buildings; they yield no profit but the rent or annual value, which in general is alone rateable; therefore the payment of rates lessens the tenant's ability to pay rent in proportion to their amount. Thus it appears that where personal property is not

Rates may be considered as part of the rent of buildings.

rated, farmers and householders contribute little or nothing out of their own personalty to the support of the poor. It is, however, certain they have them to pay; and when an advance takes place beyond what was calculated upon at the time of contracting for the rent, the tenant is subject to the whole increased demand. This is the great grievance complained of by tenants, which has been severely felt of late years; the poor-rates increasing with the occupier's inability to raise them. But, on the other hand, if times had been good, the poor well employed, and the rates reduced instead of raised, the tenant would have received the whole advantage. Therefore the risk is mutual, and it is the business of both sides, when contracting for rent, to form their own judgments as to the probable average amount of the poor-rates during the continuance of the lease or agreement.

Why poor rates are paid by tenants or occupiers.

Annual profits, on which the rate is laid, are produced by the cultivation of land and the occupation of buildings; therefore the payment of assessments is very properly the

business of tenants and occupiers, who are generally on the spot to guard against imposition or excessive expenditure. Poor-rates are due from property the same as rent; and the reason of their appearing the greater grievance, and being paid with more reluctance, is, they are oftener exacted, and are liable to vary in amount according to times and the wants of the poor. Occupiers are much interested in their regulation, and the good management of them depends upon their active superintendence. Poor-rates are under the tenants' direction, and it is natural for them to feel the most interest where they can exercise the most control, especially when by interference any expence can be saved: whereas, rent is generally fixed for many years, and requires little more consideration from the tenant than to provide two certain sums against two certain times of the year. Extraordinary exertions or industrious interference cannot alter the sums, although by such means the power of payment may be alleviated.

Poor-rates diminish rents.

Rents are in some measure regulated by the amount of poor-rates. An advance in poor-rates causes a diminution to the same amount in the value of rent; and the value of rent rises in proportion to the reduction in poor-rates.

Rate on land.

The rent of a farm should be the sum which remains after deducting the average amount of all the necessary expences from the average value of the produce. A calculation for the purpose of ascertaining the average annual value of any farm would include a great variety of particulars, all of which would be liable to vary in different seasons and situations. In some seasons the crop is so deficient, and the prices of produce so low, that no rent can be cleared, although it must be paid; whilst, in others, crops are so bountiful, and prices so high, that much more than the rent is cleared. The medium betwixt these extremes forms the proper subject of rate.

Rate on buildings.

The rent of buildings is a certain per centage on the capital invested in them, or their relative annual value compared with others in the

neighbourhood. The latter is the most common mode of fixing rents on buildings; their annual value depending so much on the demand for them in the particular situation in which they are placed. Their local advantages or disadvantages are of great consideration. Amongst the latter, the rates are of great importance, and form a drawback upon the rent, which is calculated upon by both landlord and tenant; and if, during occupancy, any serious alteration takes place in the amount of poor-rates collected, the tenant has the same power to cause the rent to be settled as the landlord has to raise it; namely, by mutual agreement, or parting. But it may be observed, on the part of the tenant, that when he is fixed in possession of a farm, and has laid out considerable sums of money in improvements, he cannot leave it without loss until the value of those improvements is returned to him by additional profits. In the mean time, his crops may have failed, and the poor-rates may have risen much higher than they were at the time of con-

Tenants do not quit, notwithstanding poor rates may have risen higher than expected.

tracting for the farm; as it generally happens, they run the highest when the occupier is least able to raise money. Farmers living under a high rack-rent, which they are unable, through misfortunes and bad times, to raise, feel, in some measure, compelled to remain, in the hope of better prospects. They know that seasons and prices are precarious, and live in hope of each succeeding year changing for the better. They can seldom give up without loss, especially in those seasons in which they experience distress. The interest of their capital is not sufficient to sustain them without employment; and few would be able to get a living in any other business, except as labourers. They can quit, it is true, and endeavour to take another farm, at a lower rent; but they must remain where they are until they meet with a suitable situation. This may take much time; and, during the interval, they are struggling with the old take, praying for a reduction of rent; but the landlord, probably, expects that his farms are let at

an average rent for a number of years, and may not be willing to grant relief for particular years, thinking that the unprofitable years may be balanced by those which have been, or may hereafter be, profitable. The burdens which most immediately oppress the farmer in such a situation, are rents and poor-rates; and, it is probable, he thus not only pays the poor-rates entirely out of his own capital, but part of the rent also; and unless a favourable change takes place, his capital will be absorbed in these payments.

Poor rates rise when trade is bad.

Unfortunately, many farmers are able to testify, by experience, that this is a faithful picture of their situations in the late depressed times. In some places tradesmen were so little employed, that poor-rates ran nearly as high as rents: at a time, too, when agricultural produce sold at the very lowest price. The ruin of the farmer, in such a case, was almost inevitable, unless he had extraordinary resources. But it may be asked, who could foresee these distressing times, so as to guard against their

ruinous effects? as the thing was impossible, so was it not improbable, at their commencement, that circumstances might have happened the reverse of all this. Crops might have proved good, profits high, poor-rates low, and the tenant, in consequence, greatly benefited. Neither side can make any difference in the rent, on account of a trifling alteration in poor-rates; but it is certain that their average amount ought to operate in diminution of the rent, as far as each can be ascertained. Poor-rates are of a fluctuating nature, and on entry each side have to consider what they are likely to be during the holding. Each run the risk of a rise or fall; and it is their own fault, or ill-luck, if their calculation exceeds or falls short of the reality.

ON RATING REAL PROPERTY.

REAL property in the poor-laws signifies lands, buildings, and other immoveable things, which are the direct objects of sight and touch. Real property defined.

Lands and houses are placed first in the statute in the list of things to be rated, as an example of the description of property intended to be taxed.

Land, in its legal sense, is a comprehensive term, and means the soil or surface of the earth, and every thing upon it, or underneath it; therefore natural productions, and artificial improvements, are rateable to the poor. Land and its appurtenances.

It has been determined by the judges, that "all things which are real, and in yearly revenue, must be taxed to the poor." However, in most parishes, real property, The rate is generally confined to land and buildings.

such as land and buildings, with their appurtenances, are the only property to be depended upon for a series of years. They are substantial, visible, and stationary; and their annual value being once ascertained, remains the same for a number of years. The rate upon them needs no alteration, until there is an alteration in the property, which seldom occurs.

Annual value rateable.

Real property is rateable according to its annual value, or the rent that it is fairly worth, making adequate allowances for such as is liable to decay. It is of no consequence, whether the occupier of real property reside in the parish where it is situate or not, as he becomes a rateable inhabitant, by the occupation of real property within the district.

Land is ratedhigher than buildings.

Land, from its intrinsic worth, bears the highest rate of any property, in proportion to its annual value. It is not, like buildings, liable to decay; but, on the contrary, becomes more valuable by use and cultivation. When first inclosed from a wild state, no tax can be imposed till it is productive

of annual value; and in proportion as it is improved by cultivation, it bears a higher rate.

Land is rated according to about half its profits.

In laying a rate upon land according to the average value of the rent, only about half its profits are rated; namely, that part paid to the landlord. Land should yield a profit of two rents, one for the landlord, and the other for the maintenance of the tenant's family, and rewarding his industry. When the farm is in the occupation of its owner, he receives all the profit; but when let to a tenant, only part of it. The proportions of profit to each, will, of course, vary according to local circumstances, and the change of the times. Sometimes the tenant's share is entirely absorbed by the scarcity of the crop, or the depression in its value; whilst the landlord's share is certain, so long as the tenant has any thing to pay with. On the other hand, some years may be so favourable, that the tenant receives two or three times his average profit, whilst the landlord still remains stationary. Thus the balance of profit is constantly fluctuat-

Value of rent and tenant's profit constantly fluctuating.

ing, which renders any previous calculation, for one particular year, entirely illusive. Seasons and prices are so changeable, that it is impossible to ascertain, beforehand, what amount of rent farms will bear. Calculations may be formed of the average expences and produce of a number of years, and thus fix a rent for future years, that may prove quite ruinous, or beneficial, to the tenant. If the average be taken for so many as twenty years back, it would be very doubtful whether the average of the next twenty years would be the same. Even if it happened to prove so, and a few of the first succeeding years included in the future average be bad ones, the farmer might be ruined before the profitable years arrived; or if the first years should prove the best in the average, the tenant would, by an equal chance, get far above his half share of the profits of the farm, especially if he should happen to quit at their termination. But these are extreme cases, which may not frequently occur, and however objectionable any plan of fixing the annual

value for rent or rates may appear, yet it is certain some mode must be adopted. In our work on "Valuing Rents and Tillages," a plan of ascertaining rents is given, which is founded on the principle of deducting all the local expences and outgoings of management, on an acre of the best and worst soils, from the average value of the produce, and, allowing ten per cent. on capital employed, the remainder is awarded as rent. When the rents of soils of the best and worst qualities are found, the intermediate qualities may be judged by comparison and relative shades of difference.

Although rents are constantly changing in value, they are allowed to remain at the same amount for a number of years.

As rents, like all other things, are liable to constant alteration, and as landlords and tenants are aware of this uncertainty in the value of their profits, they are commonly agreed in suffering the nominal amount of rent to remain unaltered, when once fixed, for several years; in order that years of peculiar good or bad seasons shall have a chance of being counteracted by those of a different description.

Annual value is regulated in some degree by situation.

The demand for renting land and buildings has a great influence upon their annual value, and it is often found that property of the same quality and extent fetches, on an average, two or three times as much rent in one situation as in another. In populous districts, land is occupied for pleasure and convenience, rather than profit, and in such situations commands very high rents, whether of good or bad quality, although not capable of yielding near so much produce, at the same expence, as land in a more remote part of the country, let at a low rent. This subject requires great consideration in laying a rate upon landed property; as there is seldom enough difference made in fixing the relative value of lands or buildings in different situations.

Mode of ascertaining annual value.

There are three ways by which the annual value of landed property is usually estimated for the purpose of a rate. First, by a suitable per centage on the purchase-money or value of the building or land, deducting therefrom the average amount of repairs that may be required; second, by

the rack-rent charged by the landlord. And, third, by a valuation of the profit to be derived from occupation, if the subject under consideration be a farm; and by comparison with the rents charged upon similar property in the neighbourhood, if it be occupied for trade, convenience, or pleasure. The first mode supposes the price given for a house or field to be exactly what each may be worth, or that the value of it may be ascertained. To arrive at either of these points exactly, is impossible; near approaches may, in some instances, be effected; but for the general purpose of making a rate, they are not sufficiently applicable to situations and local annual value. If the house or field have been bought at a sale, although several bidders might be disposed to give as much for it as it was fairly worth, yet each might form a different opinion of its value; and, in the hurry of contending for it, might be led to bid more than was first intended, and thus give more than it was actually worth. In purchasing by private contract, property

is often sold above its value, especially if there be several purchasers in competition.

Property is not rateable according to the sum that it cost, unless that sum be its fair average value.

Sometimes property is sold under its value, from the want of competition in purchasers. The price given for land or buildings depends more upon the demand for such property, than upon its real intrinsic worth. Persons will often give twice the real value of a house or field, to suit their convenience, rather than miss the purchase; and the value of real property often varies very materially in a few years, during which no purchase may take place. Besides, in some instances, property remains in the same families for centuries, in which it may never be requisite to ascertain its value, except for the rate. In all these cases it is necessary, first, to find the annual value, and reckon so many years' purchase upon it as might appear reasonable; which annual value is the thing sought for; therefore the annual value cannot be found from the purchase-money; but the worth of property may be computed from its yearly

return. Laying the rate according to purchase-money, is, in its nature, quite fallacious; for it fixes the tax upon the chance of good or bad fortune of the purchaser, instead of the proper annual value, thus operating as a bounty upon a good bargain, and as a penalty upon a bad one.

Rate upon purchase-money fallacious.

Rack-rents are seldom a fair criterion of the rateable annual value, especially if the property be under lease. Lands and houses are rateable according to their improved value at the time of making the rate; and although a farm on lease may be held under a rack-rent, which is supposed, at the commencement of the term, to be a fair average annual value; yet if its local advantages prove greater than was expected, or if substantial improvements be made by the tenant, by which the value of the farm is increased, the farm becomes rateable in a higher degree, without regard to the lease by which the rent is fixed.

Rates not laid according to rack-rents, when under lease.

The rack-rent, or full yearly value, is seldom paid even by tenants at will. Their rents are, in some measure, apportioned

Rack-rents are seldom paid.

according to the circumstances of their landlords; as we find it not unfrequently happens, that those tenants, who are so fortunate as to be fixed on the farms of noblemen and gentlemen of great property, are under more indulgent rents than others under landlords, whose very limited incomes obliges them to demand the most rent they can obtain.

Some tenants agree to give more than an average rack-rent.

Small proprietors are not in the habit of fixing their rents by valuation of expenses and produce; but, in general, by bargaining for as much as they can induce a tenant to give. Thus rents are, in some cases, strung up to more than their proper value. If there be competition, one person bids against another, according to his situation and necessities. Each calculates on the advantages to be derived in his own peculiar case; and rather than miss the present chance of suiting his convenience, is induced to bid more rent than the property is worth for an average of years. Certain situations are more valuable to some persons than to others; much depends upon the place con-

taining those conveniences, which are most suitable to the wants of the occupier.

The rent actually paid is not a fair criterion of the annual value on which the rate should be fixed.

Notwithstanding the legal principle of rating be to tax the annual value, and that the rent actually paid appears to be a proof of what the property will yield; yet it will be found, on the slightest investigation, quite unreasonable to apportion rates according to rents artificially raised above their proper standard. If rates were laid, in any instance, according to excessive rack-rent, the tenant, who is so unfortunate as to labour under it, would be twice a sufferer; both the rent and rate would oppress him; and instead of contributing, agreeably to the act, according to his ability, would be excessively rated because he was excessively rented. The fair annual value is difficult to ascertain; but most probably exists in the medium betwixt the two extremes of low rents under lease on the one hand, and high rents under yearly tenures on the other. This conclusion suggests the propriety of the next mode of valuing for the rate; which, on account of its equality to

all rate-payers, is most commonly adopted; namely, —

Principle of laying the rate.

By valuation of the profit to be derived from occupation, if the property be a farm; and by comparison with an average of the rents charged upon similar property, if the subject rated be used for the purposes of trade, convenience, or pleasure.

How the rate of farms may be estimated.

In rating the land of a township, where the occupiers are chiefly farmers, one way of estimating the average rent different soils are worth, is, by deducting all the expenses and outgoings of cultivating an acre of the best soil, from the average value of its produce; then deduct 5 per cent. on the capital employed, and 10 per cent. as a reasonable profit for the farmer's exertions, the remainder will probably be the fair annual value. The same may be done by one acre of the worst land in the township, and the intermediate qualities may be fixed by comparison. Due allowance must, at the same time, be made for land lying at a distance from the homestead, and other disadvantages, which vary according to local

circumstances. Another plan is, to deduct all the expenses of management from the average value of the produce, and then divide the remainder betwixt the landlord and tenant; the one-half for rent, and the other half for interest of the tenant's capital and a maintenance for his family, and profit. In many cases only a trifling difference will be found in the result of these two modes of ascertaining the annual value; they both arrive as near the truth as any method yet discovered.

Grazing farms and grass land require a different calculation. They are managed at so little labour and expense, that one-third of the net profit is a fair remuneration for the tenant, and the two-thirds paid as rent will be found, on comparison, to correspond with the rent fixed on arable land of similar soil. On this account grass land may be safely included in the valuation of the farm, on the same scale as soils of equal quality under the plough. In estimating rent, grass land bears a higher value than arable land of the same quality. The

Grazing farms and grass land.

sward belongs to the proprietor, therefore the value of it is part of his property or capital made use of by the tenant, for which interest or rent is due. But the tenant-right of arable land is the tenant's capital. This remark, however, can only apply to a valuation of the rent. In estimating the annual value for the rate, it is of no consequence to whom the sward belongs, the tenant being rateable for soils according to their relative quality and value, without reference to any other consideration.

Rate of land must vary according to quality and situation.

Soils which are naturally fertile, such as loams and rich clays, with a mixture of lighter soil, are the most valuable; and, if in a good situation, should bear the highest rate. There is a regular gradation in soils, from the richest alluvial loam, to the most barren heath; and the difference in their composition is so minutely varied, that no rule can be formed, by which their relative value can be exactly ascertained. All that can be done in this way is, after fixing a rate for the best and worst soils, to judge of the intermediate qualities by comparison,

and vary the rate according to the apparent difference in their value. Due regard should be paid to the advantages or disadvantages of situation; as it often happens that land of indifferent quality near a town is worth twice as much rent as land of better quality situated half a mile from home. A corresponding difference should be made in the rate.

Orchards and gardens.

Land appropriated to orchards and gardens is, in general, let at higher rents than when in pasture, or under the plough. It is then put to more profitable purpose; more hands are employed in its care and cultivation; and, of course, there is a greater chance of labourers gaining settlements, and becoming chargeable to the parish. The fair average rent which orchards or gardens command, is the criterion for fixing the rate; in ascertaining which, due allowance should be made for the great expenses of labour and manure, and the consequent greater risk in the produce being unprofitable, or wasted, from the dif-

ferent crops grown being more hazardous, and not so commonly saleable as corn.

Annual value depends upon seasons and other circumstances.

The annual value of property depends upon such a variety of circumstances, that it is impossible to form a rule for computation that would apply to all situations. So much depends upon the seasons, the price of produce, the value of labour, and other expenses, which are always variable, that it is extremely difficult to ascertain the profit to be divided betwixt the landlord and tenant, which is the subject of the rate. Such calculations may be formed to suit the particular locality of the farm; but unless it be conducted with great care and skill, very erroneous results may ensue. The rent is so small a portion of the value of the produce, that if one item be omitted, or any thing be overcharged in the calculation, the remainder, namely, the rent, is presently increased or diminished very materially.

When an important alteration takes place in the value

The value of rents seldom remains stationary long together; and when any important alteration takes place in the dif-

ferent expenses and value of produce, it is then necessary to make a suitable alteration in the rents. And if the value of all descriptions of property be not equally affected by the change of times, the above modes of calculation may then be adopted for forming a standard, whereby the rents and rates may be regulated and rectified; but for common occasions, where rents are equal, and the tenants appear satisfied with them, it is found the safest plan to judge by the average paid in the neighbourhood, making due allowance for local convenience or disadvantage. Nor is it very material to ascertain, very minutely, the rent of land for a rate, in townships where no trade is carried on; for if any certain rate be fixed on one field, whether above or below its annual value, the rate will be equal, if a relative and proportionate value be fixed on others, whether the scale be high or low. The sum required for the relief of the poor, from each occupier, is not regulated by the high or low scale of value on which the rate is framed; but by their

of produce, the annual value is proportionately affected.

The relative annual value must be kept in view.

wants and necessities. Where buildings, appropriated to trade or pleasure, are in the same township with land used in agriculture, the scale of value should be preserved throughout all the property; and, as the rate is laid upon buildings in proportion to their average rents, so the rent of land should be ascertained, to secure the equality. On this account it is necessary to have in view the annual value, when fixing the rate of land.

Rate will not hold good where it exceeds the rent.

Land is seldom rated to the rack-rent, because if, in any one instance, the annual value in the rate exceed the rent paid to the landlord, the rate will not hold good, unless it can be proved, which is in most cases very difficult, that the property is rented below its real value. It may be supposed, that the rent actually paid is the fair criterion of the value of property, as it yields neither more nor less profit to the landlord than the sum paid to him; and this profit is held by some persons to be the proper rateable subject. But if such a principle were adopted in townships, where different

proprietors let their lands at high and low rents, the rate would be as unequal as the rents, operating very unfairly on tenants under rack-rents. Besides, a difficulty would arise, where a proprietor occupies his own farm, whether it should be classed with the high or low rented. No yearly sum being actually paid, it would be necessary to form one; which, it is held, should be made according to the average rent of similar farms in the same township. Thus, it is clear, that in some cases the comparative annual value must be ascertained, or the rate cannot be laid; and as the tax is required to be levied equally on all property, a regular valuation of the premises occupied by each inhabitant must be made, on one equal scale of relative value.

Scale of the rate.

Land is usually rated at about two-thirds or three-fourths of its average rack-rent. There is no law which fixes the scale of the rate; but it is provided that all property shall be rated, in relative proportion, throughout the district for which the rate is made. It will easily be conceived, that

it matters little on what scale the rate is made, whether one-half, two-thirds, or three-fourths of the value, if the relative proportion be preserved. The same amount is paid to the poor on a low as on a high scale; and if the rates be equal, the contributions will be the same by the end of the year, in both cases.

BUILDINGS.

Buildings are rateable according to annual value.

Buildings are rateable according to the annual value yielded to the landlord, if the rents are in the same proportions to all others in the township; but as this can seldom be the case, unless the whole belongs to one landlord, and all the rents have been valued at one time, the apparent annual value is fixed by the assessors, or persons appointed by the churchwardens and overseers. In doing this, the situation, extent, and convenience are to be considered, and a relative proportion made with other buildings included in the same rate.

The relative value of buildings is computed by measuring their length and breadth, with a tape, divided into yards and hundreds. These dimensions are multiplied into each other, for the superficial content of the ground occupied by each building. The height is taken by the eye, or by measurement, if the buildings are very valuable. An account must be taken of the number of stories, as well as of the general appearance and adaptation of each building to the purpose for which it is used. The rate must be laid according to their relative capacity and convenience, and due allowance made for situation and repairs. All these considerations regulate the rate per yard. By learning the rents of several buildings, of different descriptions and situations, beforehand, and trying how much per square yard will make the amount, a scale may be formed, by which the rate of the whole township may be regulated and ascertained.

Mode of computing annual value of buildings.

Every situation has its own peculiar conveniences or disadvantages, which render

Rate on buildings partly regu-

lated by their situation.

buildings more or less valuable in proportion as each may preponderate; and the difference to be made in the rate on such account is best ascertained by learning a few of the rents on or near the spot, which are supposed to be fairly laid.

Old buildings.

In laying the rate per yard, great allowance must be made for old buildings. They are often of large dimensions, and require frequent repairs; and are generally found to contain much less convenience in the same space than those recently erected. The inward convenience, as well as the outward appearance of houses and other buildings, should be duly considered, as it is very evident, that a house well arranged, and in good order, is of greater annual value, and worth more rent, than the same extent of building awkwardly divided and in bad repair. It is not usual, however, to go into houses to fix their rate, therefore the inside must be determined by supposition. The inward convenience generally corresponds with the outward appearance; and if the outside of a building be well

Inward convenience.

arranged and in good order, it may be naturally concluded that the inside is not much neglected. A good idea may be formed how a building is divided, and to what purpose it is applied, by counting the windows, and noticing their arrangement. Its appendages, such as cellars, cellar-kitchens, garrets, &c. tend to increase its value, and must, in the same proportion, increase its rate.

Cellars, garrets, &c.

Every description of building, from which any profit arises, or by which the annual value or rent is, in the least degree, increased, is rateable to the poor, when occupied; and if only part of a house or other building be occupied, the whole is rateable.

All descriptions of buildings are rateable.

Buildings must be classed in the rate along with the ground on which they stand, and the yard or ground which lies open to them. The profit of some buildings appropriated to trade, partly arises from having a little spare ground about them; and if an extra rate be imposed upon them on that account, the ground itself should not bear a separate rate, otherwise it would be rated

Yards adjoining buildings.

twice, which is illegal. They should both be entered under one head, and bear one rate, which should be in proportion to the value of both united.

Reason for rating farm buildings low.

The annual value is fixed upon land, under an idea that there are buildings belonging to it, in which the tenant, his family, and cattle, can be conveniently lodged, and his corn and other produce properly housed. These buildings are as necessary as implements for making the soil yield an annual profit, and cannot be separated from the fields without rendering them of less value; therefore the buildings are, in some measure, rated in the fields to which they are attached. It has been contended, whether buildings, occupied entirely for the use of land, should be rated in any degree, and is now a settled custom to impose only a low rate, in order to make a difference betwixt good ones and bad ones. On the first view it appears reasonable for the tradesman's house and shop to bear the same rate in proportion to their real value, as the farmer's house, barn, and other buildings.

But on referring to the principle of not rating twice, it will be found that such a method would be erroneous. It is shown above that farm buildings are already rated in the land; but where is the tradesman's substitute for his buildings? His buildings are his original and entire subjects of the rate, and as such should be taxed according to the rent they are worth; not in exact proportion to the annual value of the land, but deducting one-third or one-fourth, to allow for repairs, and for being less substantial property than land.

Buildings in general should not be rated so high as land, in proportion to their value.

Buildings in general do not yield the tenant any direct profit. They are indispensably necessary to the occupier; but do not, like land, make a productive return, except to the landlord in the shape of rent.

This rent should not be taxed in the same proportion as the rent of land; for at the same time that the latter becomes more valuable by cultivation, the former perishes and decays with use. "The rent, therefore, is the total annual produce; but as buildings are subject to decay, the rent

should be divided into two parts; one to be laid by for the purpose of repair, or, in other words, to reproduce the capital, which has been expended on a perishable subject. This portion is not assessable, because capital is not directly taxed to the poor's-rate; the remainder is the annual produce of the capital thus originally laid out, and is the only fair object of assessment. A house, therefore, yielding a certain rent, is, by this method, not only assessed more than what land yielding the same rent is, but so much more as the sum amounts to, which the the proprietor ought to lay by out of his rent, for the reproduction of his capital. Such a division is nearly made by the landlord and tenant, when the latter agrees to make those substantial repairs which he would not otherwise be compellable to do. Where that takes place, the rent paid to the landlord is the true profit which should be taxed, the tenant not being rateable for these repairs, although they are, in effect, a rent payable to the landlord in kind. But where the landlord is to make these repairs,

and receives, in consequence, a greater rent, an adequate deduction should be made on that account, and the occupier assessed only for the residue."—Nolan.

In rating land and buildings together, according to their annual value paid as rent, such amount is not the full annual profits of the property, but about half of it. For if it be supposed that the fair way of ascertaining the rent of a farm, be to deduct the expenses from the produce, and then divide the remainder equally betwixt the landlord and tenant; the rate is only laid upon the landlord's share, and the other half, namely, the tenant's share, is free from tax. The tenant's share of profit is, however, quite uncertain, and depends, in a great measure, upon his own skill and industry, which are not rateable; whilst the landlord's share is a clear annual return, and is so certain, that it must be paid so long as the tenant has any capital left; and if it be not usual to rate personal property in the district, the profit which the tenant makes more than the rent, is no more rateable than the pro-

The annual value of property is about half its profits.

fits of a tradesman from the sale of his goods.

Rates to be laid according to clear annual value.

Although at first sight it may not be clearly discerned that any profit arises from buildings occupied by tradesmen or private gentlemen, except the rent; yet, on a nearer view, it must be supposed that such occupiers possess personal property, by the use of which a livelihood is obtained, in the same manner as the farmers out of personalty engaged in cultivation; and as personal property is seldom rated in either case, it remains that the clear yearly average value of lands and buildings is the most unobjectionable sum on which to impose the tax.

Farm-buildings occupied by tradesmen and gentlemen.

Barns, stables, and other farm buildings occupied by tradesmen, or independent gentlemen, are partly taxed in the fields in their possession, and are therefore rateable on the same scale as other farm buildings.

Where trade and farming are intermixed in the same township, it is a general practice to calculate the rate on the farm buildings — first, on the same scale of value per yard as those used in trade, or at their real

annual worth as trade buildings; and then reduce them to one half, two fifths, or one third, as local circumstances shall seem to require.

Proportions of rate on land and buildings.

When land is rated at three fourths of its annual value, houses, shops, warehouses, and other trade buildings, are usually laid at one half or two thirds, and farm buildings at one fourth or one fifth. These proportions vary with local circumstances, which can only be decided on the spot. Each description of property should be justly estimated, not only in regard to its own particular kind, but in reference to all other sorts of property in the same township. Every kind of occupation is affected with its own peculiar drawbacks and deductions; and even the degree of profit obtained in any one particular trade, is liable to vary indefinitely according to situation, convenience, and demand.

Rates are not fixed according to profit made in the building, but

Rents and rates are not directly fixed on shops and manufactories, according to the degree of profit obtained in the exercise of different trades at the particular time of

according to average rent.

making the rate; but, by the demand for such buildings, and the average rent that may be fairly expected in several succeeding years, from persons willing to carry on the trade; or the rent the occupier would give if the premises were to let. These circumstances are, no doubt, in some measure regulated by the profits of the trade in the long run; but should be held in view when fixing the rate, in order that the assessments may be collected in an uniform manner, without being affected by the sudden changes of the profit and loss of trade.

Difference of opinion in regard to the rate on buildings.

Opinions are often found to vary materially in regard to the fixing of rates on trade buildings, and on their relative value compared with other buildings. Different conclusions are drawn according to the particular situation and ideas of each calculator, which, not unfrequently, lead to litigation and appeal. Change of tenancy sometimes causes a change of the trade of the occupier, or an alteration in the building, or the value of it, which the assessor

could not foresee and provide for. A man's ability and industry are not rateable; but if a building be enlarged or improved, it is then rateable according to its improved value.

A man's industry is not rateable.

If a tradesman pay more rent, or succeed better in his business than his predecessor, his buildings are not immediately rateable in a higher degree on that account. But if, in length of time, the situation evidently becomes more eligible, and the premises more valuable, so as to warrant a higher average rent, more rate is due. Although the tax be levied personally, yet it arises in respect of realty; and therefore no allowance must, in any case, be made on the difference of skill, capital, or industry of the occupier, unless personal property be rateable within the district.

It is the province of the quarter sessions to decide on the equality of a rate.

"The court of king's bench will not presume that a rate is unequal, nor interfere with the quantum of a rate, unless called upon to do so, by a case requiring their opinion on that point; yet they will interfere and quash one, when framed upon an

erroneous principle, and the inequality is evident on its face, or is pointed out to them in a case stated by the justices at sessions. But a mere difference in the proportional assessment of lands and houses, or of real and personal property, will not induce the court to infer inequality, or intermeddle with the peculiar province of the quarter sessions, who are to judge of the equality of the rate. Thus the court of king's bench sustained a rate, which appeared, by the title, to be made upon all occupiers of lands, at three fourths of *the yearly value* of the lands, and upon all occupiers of houses at the rate of one moiety of the yearly value of their respective houses. For though the yearly value might mean the clear yearly value after all deductions, in which case the rate would be unequal; it may, with propriety, mean the yearly rent without these deductions, in which case it will not be manifestly unequal, and the court ought to put such a construction upon the title of the rate as will make it good. Where it had been customary to make a distinction in the

proportion of the rate between farms which were assessed at one penny in the pound, and dwelling-houses and cottages only three farthings in the pound; the court of king's bench, on a case stated, affirmed the judgment of the sessions, confirming a rate which assessed them all equally at the rate of one penny in the pound, and the next year confirmed their order for quashing one in the same parish, because made upon the ancient principle of different proportions. But on the other hand, it was decided in one case, that where the relative proportion which one species of property bears in value to another, is stated to be the foundation of the assessment, and is grossly and manifestly unequal, the court of king's bench will quash the rate."

Rates need not be made to the full value of property.

In making a rate, it is not material whether the full value be put upon the property in the township, or on a part of its value; as one third, one half, or three fourths. The rate will hold good if the relative value be preserved. The great rule is, "that whatever be the proportion of

rating in a parish, whether to the full value or otherwise, the rate must be equally made on all persons."

Engines and machinery.

It has been decided in the king's bench that engines or machinery are rateable along with the building in which they are placed, if they belong to the landlord, and be let with the premises: and the court were of opinion, that though it did not appear whether the machine or engine were actually fixed to the building or not, yet, being demised with it, and forming one entire subject, and the rate being on the building, it was properly rated for the entire profits; the house acquiring a greater value from the use to which it was put.

Machinery not usually rated which is not fixed to the freehold.

Notwithstanding this decision, it is not usual to rate machinery which is not fixed to the freehold, or which may be considered personal property; nor is it usual for the assessors to make inquiry whether machinery or engines be the property of the landlord or the tenant, or make any difference in the rate on that account. But engines or machinery, such as steam engines,

water works, and the like, fixed to the walls, are rateable according to the additional value of the building in which they are placed, by the use of them. So also a crane, used at a public or private wharf, is rateable according to the use made of it, and the profitable return; and a weighing machine fixed to another building, is rateable for its yearly profits, after making adequate deductions for expences of repairs and reproducing the capital laid out in its erection; which is equally due in all descriptions of buildings and machinery. Where a corporation fixed a weighing machine in the street, adjoining a building which it possessed, for the purpose of weighing waggons, carts, &c. loaded with coal, stone, or other materials, at two-pence a ton, the steelyard part of the machine was fixed in the house, and the machine within the ground in the street. The corporation was rated for both the machine and the house, according to their value united.

Soke mills or other privileged buildings.

So any building having any peculiar privilege, is liable to be rated in a higher degree in proportion to the profit and advantage gained thereby; as a corn-mill, having the exclusive right to the mulcture of all the corn and grain in a certain district, is rateable according to the value of the soke, besides the regular rate on the mill as a trade-building.

Machinery and buildings are both rateable if let together.

In a case tried before the king's bench, machinery was tenanted along with a building, at a certain rent for both; it was decided that the lessee, who had by lease to his under-tenant agreed to pay the rates, was rateable for both, notwithstanding personal property was not rated in the same parish. It was stated that the building without the machine was only worth two guineas per annum, and both together were rated at 36*l.* There were other machines in the same building, which belonged to the under-tenant, and were not rated. The building and the machine together were considered one entire subject; being let under one contract, and yielding a certain

annual value during the currency of the lease. Two of the judges were also of opinion that the machine was rateable as personal property, and that the fact of personal property not being rated in the parish made no difference in the eye of the law; the question being whether the machine were rateable property. Thus it appears that the lessee should not have appealed against the rate for including his machine, but for omitting others; and that machinery is legally rateable as personal property. The question was not put whether the rate was equal; and the court thought it sufficient to decide the question brought before them, without entering into the equality of the rate.

Machinery and other personal property not usually rated.

It is generally agreed amongst occupiers not to rate personal property of any kind. Where it has been attempted, much confusion and imposition have arisen; for it was found impossible to judge beforehand what might be the profit realized by the end of the year, or for several years to come. Besides the rate would require alteration as

often as any machinery was worn out, removed, or renewed, and overseers would have to be constantly on the watch to impose the rate immediately on its introduction. It is, therefore, an almost universal custom to rate manufactories, not according to the actual profits of the trade by the use of the machinery, but in proportion to the rent the buildings with their fixed engines are worth to a person wishful to carry on the trade there.

IMPROVEMENTS.

Property is rateable according to its improved state.

Poor-rates are laid on land and buildings in respect of the yearly profits which they yield, whether by natural or artificial means. Land is considered the principal subject of the rate; and any alteration which improves its value increases its rate. If a piece of land, with building upon it, be worth 20*l.* a year, and rated at 15*l.*, be so much increased in value by the erection of another building, the use of a medicinal spring, converting some of the ground into

a reservoir or dock, or by any other means, as to be worth 80*l.* a year, the rate must be altered to 60*l.* The additional value must not be put distinct from the old rate, but both must be classed together in one sum; for it is not a rate on the new profits which arise, but on the same quantity of land for its improved value.

Improvements are rateable where they are made, although they may be only useful in another township.

It is sufficient to show that property has a local value, without proving that it realises a profit on the spot. If this were not the principle of rating, the tax would be evaded, in some instances, by increasing the value of the property. As, where a field is made into a reservoir in one township, for the use of persons in another, the occupier is rateable to the township in which it is made, according to the improved value of the field.

Improvements are not rateable until they are actually made and in use.

The rate must be laid according to the present average value, and not include any speculative improvements, or supposed application of the property to a more profitable occupation. Improvements are not rateable until they are made and in

actual possession, and likely to prove permanently useful. But if an old building, bearing a certain rate, be taken down, in order that another may be erected in its place, the old rate is continued till the new building is completed and occupied, and then a new rate is imposed, according to the improved value of the property. This rule is observed in all descriptions of property where improvements are carried on. Lord Ellenborough, Chief Justice, observed, "it was not enough to show that the expences laid out in any particular year, absorbed the profit of that year; for the benefit of such expences may be derived in future years, as is often the case with improvement of farms. If valuable land, in the neighbourhood of a town, be covered with buildings in one year, the expences of that year would probably exceed the profits; but the land would not cease to be rateable on that account."

Property is rateable during the making of improvements.

It is the average profit of property which is rateable. If this were not the case, it would be necessary to scrutinise the value

of property yearly, which would frequently show that no profit or rate were due during improvements. And, in small townships, where considerable alterations are made in the same year, and where there are but few rate-payers, the poor might be left entirely without relief. Rates are laid in anticipation of annual value. They are not gathered out of profits actually realised; but are exacted under a supposition that certain rents or profits will accrue, according to reasonable principles of calculation.

Houses, and other buildings, are rateable as soon as occupied, according to their annual value, compared with others, in the same township. And any addition or improvement made to an old building, which increases its value, renders it rateable in a greater degree. Or, if a house now be worth ten pounds a year, and by turning it into a shop, it be made worth fifteen pounds a year, it is then rateable at that sum; or, if a person purchase an estate in dilapidated condition, and lay out money

Buildings converted to a more valuable use are rateable accordingly.

in fencing, ditching, draining, soiling, or other substantial improvements, and thereby enhances its value, it is then rateable according to its increased value.

Improvements are rateable whether made by landlord or tenant.

It is a matter of no consideration whether alterations are made at the expence of the landlord or tenant; and if a tenant lay his own money out in the farm, without any recompense or assistance from the landlord, he is rateable according to its increased value, however much he may improve it. But, temporary improvements, such as ploughing, manuring, or cleaning the soil, are not rateable in land already in cultivation; for, although good husbandry renders land more fertile for several years, yet it is not permanently improved thereby, but is liable to revert back to its former state.

Temporary improvements on land are not rateable.

In a township divided into farms, which are widely interspersed, there will often be found much difference in the condition, as well as in the quality of the soil. Some farmers have their land in a high state of cultivation, and obtain much more pro-

duce than their neighbours from soils of the same quality. It requires much discrimination to fix upon the proper quantum of rate in such a case, to avoid being misled by good management. The appearance of land can be so much improved by good cultivation, that it is scarcely possible to avoid falling into this error. When a field is found in extraordinarily good condition, the land on each side of it must be examined, and a judgment formed by comparison of the soils, to ascertain whether their quality varies so much as their appearance.

A variety of soils is often found in the same township; and it not unfrequently happens that two adjoining fields are of very different qualities. Fences and boundary lines were formerly made with a view to distinguish light and fertile soils from those of a contrary nature, as well as to divide land into convenient inclosures. In general the best soils have been first inclosed; and which, by cultivation, are rendered comparatively more valuable than

those taken in more recently. Soils are not rateable in a barren state; but if fenced, cultivated, and otherwise improved, they become rateable, in proportion to their annual value, compared with others in the same township.

Permanent and temporary improvements.

In rating improvements on land, there is a distinction to be made betwixt those which are permanent, and those which are only temporary. Fencing, draining, mixing clay or marl with sandy or gravelly soils, sand with clay soils, or applying additional soil where it is wanted, are classed amongst permanent improvements: because the quantity and quality of the staple of the soil is thereby increased and improved, and cannot be reduced to its former state by mismanagement or excessive cropping. This is not the case with those of a temporary nature, such as ploughing, harrowing, cleaning, and manuring, the beneficial effects of which are liable to be exhausted in a few years; and the land may become impoverished, and full of weeds, unless a periodical application of the like

labour and manure be bestowed. The rate should be laid according to the average annual value of the soil, as it is constituted at the time of viewing it for the rate, without taking into account the increased value it may attain by future improvements. For, possibly, those improvements, however desirable and advantageous they appear, may never be made; and it is a rule not to rate improvements until they are made, and are actually profitable.

The nature of bad soils is entirely changed, and rendered very valuable, by a judicious mixture of that earth in which the original soil least abounds. In Norfolk, and other counties where sand and gravel chiefly predominate in the component parts of the soil, land has increased in value very greatly by the application of clay and marl; and good rents are obtained on large tracts of land, which were formerly supposed to be entirely barren. The rate on such land is laid according to its improved state.

When property becomes less valuable, by decay or otherwise, it is rateable in a less degree.

As the rate of any property should be raised on receiving substantial improvement, so it should be lowered when depreciated in value. Land and buildings allowed to run waste or decay, for want of culture or repairs, become rateable in a less degree; and if entirely neglected and unoccupied, cease to be rateable. But in regard to land in the occupation of a slovenly farmer, whose fields are rendered unproductive by carelessness and neglect, it is not usual to lay less rate on his lands than on those of his more industrious neighbour, when the qualities of both are alike. The rate is laid upon the supposed rent, or average annual value; and it is expected that if the occupier be a tenant, he pays as much rent under careless management as others do on similar soils, who, at more expence or labour, obtain more abundant crops. If a person occupying his own farm, suffer a part of it to go wild, and make no use of it, he probably may not be rateable for such as is not productive; because, in that state, it cannot be

said to realise profit or annual value. Such an instance, however, seldom occurs, except where assessments run high, and the land is of little value.

Land converted into quarries, clay-pits, or pleasure-grounds, is rateable according to its improved value.

Land, rendered unproductive by laying the refuse of coal-pits, quarries, clay-pits, or other materials upon it, so as to decrease its value, is rateable in a less degree. But when land, which has once borne a definite value, is converted into pleasure-grounds, it is not thereby rendered tax-free; but, in general, continues to bear the same proportion of rate which was previously paid for it. Land may thus be prevented from yielding a profitable return to the occupier, and on that account may, apparently, be out of the pale of the statute; but it may be observed, that property tenanted yields rent, which may be termed its rateable annual value. The alteration was probably made under an idea of improving the property, and thereby commanding more rent; and if more rent be obtained, it is a proof that the property is more valuable, notwithstanding it may be less profitable, in a pe-

cuniary way, to the occupier. The same argument holds good in regard to land in the occupation of the owner. Profitable land is converted into pleasure-grounds with a view to enhance the value and appearance of the residence; and if it be rendered more valuable to the owner, it would probably be the same to his tenant or successor. It would be unreasonable for opulent persons to convert profitable land, hitherto subject to poor-rate, into pleasure-grounds, and by such means remove the burden of supporting the poor from their own shoulders, to press, with greater weight, on others who are less able to bear it.

CHARITIES AND PUBLIC BUILDINGS.

Poor-houses.

Land and buildings, occupied entirely for the use of the poor, are not rateable; but if they are the property of the poor, and let or occupied by other persons, they are then subject to the tax.

Public charities are not rateable.

It has been decided that buildings, from which no profits arise, are not rateable; as

where a person provides or leaves houses for the use of poor widows, or for a charity school, if such buildings are not used for any other purpose, they cease to yield rent or annual value, and are, therefore, exempt from assessment. But if a person be employed to keep the rooms in order, or superintend the charity or the school, and live in a separate part of the buildings, such part is liable to be rated. "As where the master of a free-school was appointed by the minister and inhabitants of the parish, under a deed of indenture, whereby a house and garden were assigned for the habitation of the master, and for the use of him and his family, freely, without payment of any rent, income, gift, sum of money, or other allowance whatsoever, for or out of the same, which, together with certain lands and annuities, were given for the teaching of ten boys, sons of the meaner sorts of the inhabitants of the parish;" the schoolmaster was deemed a beneficial occupier of the house and garden, and, therefore, subject to be rated according to their annual

Free school.

Schoolmaster rateable.

value; but the school, being solely used for the purposes of the charity, was considered exempt.

Trustees and governors only rateable for their own dwellings, and not for public charities.

The trustees and governors of hospitals, or other charitable institutions, are not rateable in respect of the buildings of the charities, unless they occupy a distinct part of the buildings to themselves. Thus if a person provide and endow a house for a number of poor children, and maintain them, and a person to take care of and instruct them, who shall reside with them in the same house, neither the benefactor nor the teacher is rateable. The charity is not profitable nor beneficial, in a pecuniary way, to the person who endows it; nor is it, nor any distinct part of it, occupied by the teacher.

Churches and chapels.

Public places of worship, such as churches, chapels, and meeting-houses, are not rateable, unless the pews or sittings are let, and the rents received; for in such case no beneficial occupier can be found.

Methodist chapel rateable

"The trustees of a methodist chapel, in whom the fee was vested, and who let out

the pews for an annual rent, were held rateable for the chapel, though they expended more than the annual rent in supporting the establishment, in the repairs of the chapel, in paying salaries to the attendants and singers, and providing a house and board for the methodist preachers who officiated there. For a profit is made of the property to the full by the trustees, who are the occupiers, and let out the seats, and receive pecuniary advantage from the use of them. And admitting that there must be some expences incurred in producing the profits, it depends upon circumstances, and the mode of administering the fund, what that profit shall be; or in other words, upon the manner in which the trustees choose to apply the proceeds. Then, as it, in fact, produces profit, which the trustees afterwards dispose of as they please, the case does not differ from that of other buildings which produce profit." But, notwithstanding this species of property is rateable by law, where a profit is made by letting pews or sittings in places of public

when pews are let.

worship, yet they are seldom included in the rate. In country townships, which are but thinly inhabited, it is generally found that each farm or household has sittings attached to it, proportionate in size and accommodation to the establishment of the occupier. In such cases all will be alike if all be omitted. But in cities or market-towns containing several parishes, where the inhabitants of one parish are accommodated with pews or sittings in places of worship in another, and for which rents are charged, rates are gathered upon them according to their annual value, compared with other property in the same parish.

Church-rate.

The rate raised for the repairs of parish churches, and expences attending the office of churchwarden, is computed from the valuation of property for the poor's-rate. The assessment is made by the authority of the churchwardens and select vestry, and is collected by the churchwardens or overseers of the poor. In some places it is a custom to pay the expences of the church out of the poor-rates, which saves the trouble of a

separate assessment; but it is more regular and more satisfactory to make a distinct rate for the church, and then the various disbursements are under the direct control and management of the churchwardens.

Rate may be charged for music and singers.

Whether churchwardens and a select vestry have power to incur new expences to a parish in procuring organs, musical instruments, books, singers, ornaments, or other acquisition to the support or convenience of the church, is a question that has been recently decided in the Ecclesiastical Court. A person objected to the validity of a rate for ornaments, organ, and organist; when, after hearing the arguments for and against, the learned judge declared himself clearly of opinion, that the rate, having been made by the churchwardens and select vestry, was made by due and proper authority. The expence of the organ and organist were objected to. "But," said the learned judge, "the tendency of this sort of music to preserve the decency of public worship, and to exalt

the fervour of devotion, was notorious." In the conclusion of a very elaborate sentence, the learned judge over-ruled the objections which the defendant had taken, and admitted the rate to be legal. But notwithstanding this decision, a majority of the inhabitants may prevent incumbrances being brought on churches, by refusing to pass any objectionable amount in the churchwardens' accounts. Meetings may be adjourned till the churchwardens, who incurred the expences, are out of office; and then their successors, and the inhabitants, may adjourn in the same way, so as entirely to avoid any expences they may wish to reject. It has been recently contended, that no church assessment can be gathered without the consent of a majority of the inhabitants; and many parishes are now convinced there is no law to enforce an assessment.

CROWN PROPERTY.

A PALACE, in the hands of the crown, is not rateable; nor is any property belonging to the king, which he has in his own occupation. The king is not named in the 43 Eliz., or in any subsequent act, relating to the relief of the poor; and is, therefore, exempt by virtue of his prerogative. His exemption extends no farther than his own immediate and actual occupation.

Palaces and other buildings in the occupation of the king are exempt.

Apartments in royal palaces are liable to be rated, if their occupiers pay for the use of them by rent or service. Also if a royal palace, or other property belonging to the king, be let to a subject, or occupied beneficially by a servant or military officer of the crown, such persons are rateable in proportion to the private accommodation they obtain for themselves and their servants; although the king may derive part of the profit yielded by the property, and although

Rooms in palaces which are rented are rateable.

the property may, in other respects, be considered in the hands of the crown.

Ranger of royal park rateable for profits he may derive from the land.

" The ranger of Richmond Park is, by virtue of his office, entitled to certain profits arising out of lands inclosed in the park, the meadows of which are mowed at the king's expence for the use of the deer, and the overplus applied for the use of the king's and ranger's horses; the arable lands are manured, ploughed, and sown by the king's servants, and with his horses; but the seed is found, and the corn reaped, by and for the ranger's use. It was found, also, by the verdict, that the profits arising to the ranger for the whole of the said lands were worth 100*l.* a year, and he was held rateable for the same as the profits of land appertaining to his office of ranger; but the Court doubted at first whether his occupation was sufficiently stated. So a keeper of a royal park, appointed by the ranger during pleasure, and occupying a lodge and two acres of land within the parish, is rateable for what he occupies. The master of the rolls, and the auditors and tellers of the exchequer, are rateable for houses which

they occupy, in respect of their offices as servants of the crown."

Officers in barracks rateable for rooms they occupy.

A lieutenant-colonel in the artillery appealed against a rate, on account of his being assessed for the premises he occupied. The house consisted of two stories, divided into four rooms on each floor, besides attics. On the ground-floor one room was used for a store-room, another as a quarter for the adjutant, a third as an office for the commanding officer to transact the business of the regiment, and the fourth as the colonel's kitchen. The appellant resided in the house with his wife and family, and occupied the whole of the first floor, together with the kitchen, coach-house, &c. A man servant, who was one of the private soldiers, and his wife, who was cook to the colonel, slept in the attics, and the maid servant on the first floor. The chairs, tables, fire-grates, and the usual barrack furniture, were supplied by the crown; and beds and other furniture by the colonel. The Court confirmed the rate, being of opinion that the appellant was the beneficial occupier; and the chief

Soldiers or mere servants of the crown not rateable.

justice delivered the judgment of the Court as follows: — The principle to be collected on all the cases on the subject is, that if the party rated have the use of the building, or other subject of the rate, as a mere servant of the crown, or any public body, or in any other respect, for the mere exercise of public duty therein, and have no beneficial occupation of, or emolument resulting from it, in any personal and private respect, then he is not rateable. The property of the crown, in the beneficial occupation of a subject, whether he be a civil officer of the crown, as in Lord Bute's case (who was ranger of the new park near Richmond), and in the case of the comptroller of Chelsea Hospital, Eyre *v.* Smallpace, 2 Burr. 1059; or as a military officer, as in Hurdis's case, he is, in each case, equally rateable. For in these cases each of the persons rated had a degree of personal benefit and accommodation, from the property enjoyed by him, *ultrà* the mere public use of the thing; and which excess of personal benefit and accommodation, *ultrà* the public use,

may be considered as so much of salary and emolument annexed to the office, and enjoyed, in respect of it, by the officer for the time being. But if the use of, or residence upon, the property be either as the servant of the crown, and for public purposes only, as in Lord Somer's case, or as a mere public officer or servant, or of any other description, such as the superintendant of the Philanthropic Society, Rex *v.* Field, 5 Term Rep. 587., the trustees of a meeting-house, the servants at St. Luke's, the masters in chancery, in respect of their public offices; in all such cases, the parties having the immediate use of the property, merely for such purposes, are not rateable; because the occupation is throughout that of the public, and of which public occupation the individuals are only the means and instruments. It is said, that if the commanding officer be rated for the degree of private accommodation he enjoys in a building of this description, why not the soldiers in their barracks for the accommodation they enjoy there? I am not aware that private

Reason for private soldiers being exempt.

soldiers have any accommodations in barracks beyond what are required for the mere ordinary uses and purposes of animal nature, I mean for sleeping and eating, and the like; but if their barracks should supply even them with any accommodation of a beneficial and valuable, and not strictly of a necessary nature, the analogy between the two cases would rather afford, perhaps, a ground for including them, under such circumstances, in the rate, than for excluding an occupier of the present description from it. The reason of the thing, and the sound and established construction of the statute, subjects every person, who has the beneficial use of any local, visible property in a parish, to this species of public contribution. The parish is liable to be burdened with settlements of them and their children: a part of the property antecedently contributing to the poor-rate is, by being thus built upon, and appropriated to such public purposes, effectually withdrawn from its liability to contribute, unless the nature and quality of the occupation thereof restores

and throws it back again, either in the whole or in part, within the scope and reach of this species of parochial contribution. And the immediate occupant has, in fact, nothing to complain of; for, I believe, it never has occurred in experience, that the *quantum* of the mere rate, upon an occupier of this kind, has exceeded in amount the benefit and advantage derived to him from his occupation. Whether the commanding officer could withdraw himself from the rate by contracting his occupation in some proportionable degree, within the same narrow limits of merely necessary enjoyment with the soldier in his barracks, will be a question to be decided when it shall occur. It is enough for us to say at present, that upon the principles laid down and acted upon, in the cases already referred to, the commanding officer in question has such a beneficial occupation of these apartments, and other conveniences, as to render him rateable for the same, and that this rate, of course, should stand, and the rule for amending the same be discharged."

RATING IN AID.

WHEN any parish, or other local division, is overburdened with its own poor, and unable to provide sufficient for their support, two justices have power to assess any other division within the same county to make up the deficiency.

Two justices must judge of the necessity of rating in aid.

"Whenever there is any person or parish within the hundred in which the parish, unable to maintain its poor, is situate, of ability sufficient to supply the deficiency, the rate in aid is to be made by two justices. They have power to determine the inability of the parish which applies for assistance, and the capacity of those upon whom they make an order to contribute. Reported cases furnish no rules to guide their discretion in this particular, further than that in one parish where the rates

amounted to 25*s.* in the pound, and were gradually on the increase, and the parishes called upon to contribute were moderately assessed, it was taken for granted at the bar to be a case in which two justices might interfere." — Rex *v.* Holbeach.

Mode of rating in aid.

The magistrates have power to rate in aid only within their own jurisdictions; for they are not supposed to know the circumstances of those places in which they are not in the habit of acting. When it is found reasonable and necessary to rate one place in aid of another, the justices have power either to tax particular persons, or the whole parish, in a certain sum. The latter mode is generally preferred as being the most equitable, and it operates on the assisting division in the same manner as an increase of rate for its own poor. The *quantum* of the sum to be levied in aid must be fixed by the justices, as they are the only authorized persons, and cannot delegate their power to others. The sum thus determined may be levied by the overseers on the whole of the parish, or on those

particular persons whom they deem able to contribute.

Rate in aid must be laid on the whole parish, and not on particular persons.

It has been argued in the King's Bench, whether a rate in aid should be laid on particular persons who may be able to contribute, or upon the whole assessment of the parish. In support of the first mode, it was urged that the statute meant only to require the assistance of those persons who were of sufficient ability, and that the justices should determine who must be assessed. But the judges were of opinion that the latter mode was most equitable, and, notwithstanding the words of the statute were strong, it ought to be adopted. They observed that an order on particular persons would be hard and unreasonable, since particular persons of other parishes would be too much exposed to the order of the justices. It was observed that such a power should hardly be trusted in their hands, for they may rate some, and excuse others who are as well able to pay; and it would be extremely difficult to ascertain who were, and who were not, able to contribute.

The magistrates' order for the rate in aid must specify the sum required, and be limited as to time; for if the contributing parish be ordered by the justices to raise sixpence in the pound on the annual value, till they give orders to the contrary, it is illegal on account of the whole sum required not being previously stated. The justices have not power to grant a perpetual order; for if one of them die, or be removed, no other can alter it. The power of justices is confined within their own precincts. When parishes have to crave the assistance of others, which are not in the same hundred, application must be made to the justices at their general quarter sessions, who are authorized to assess in aid any place or division within the same county.

The order must specify the sum.

The jurisdiction of the quarter sessions, in regard to rating in aid, does not extend to two parishes, the one applying for relief of the other, situate in the same hundred; or, in other words, does not interfere where it is the province of two justices to determine. As, where a court of sessions made

The sessions have no authority for making an original order to rate in aid.

an original order within the circuit, in which two magistrates could have determined, as follows: — "It appearing to this court that the parish of Dunchurch, in the hundred of Worth, being overburthened with poor; and that the parish of Eastbridge, within the same hundred of Worth, having no poor relievable within the said parish; it is ordered, that the said parish of Eastbridge be, from henceforth, annexed to the said parish of Dunchurch; and that the occupiers of lands and tenements within the said parish of Eastbridge be chargeable and contributory towards the relief of the poor of the said parish of Dunchurch, the sum of twenty pounds a year, so long as the said parish shall be overburdened, and no poor within the said parish of Eastbridge." It was decided that this was an original order, which the sessions had no authority to make.

Persons aggrieved may appeal to the sessions.

But although the sessions have no authority to make an original order for rating in aid within the hundred, yet any person, feeling himself aggrieved by the order of

two justices, for rating in aid, he may appeal to the bench of justices, at their general quarter sessions, who have power to quash the order, and make a new one.

"Should the justices in or out of quarter sessions refuse to make an order of this kind, the remedy is, by application for a writ of mandamus to the court of King's Bench; and it is immaterial although the rule to show cause command them to rate and assess a particular parish, instead of commanding them to hear the complaint. But the form of the mandamus, if it is granted, should be to compel them to enquire, in the first place, whether the parish stands in need of any assistance, and to act accordingly."

Further appeal may be made to the King's Bench.

SPRINGS AND WATER-WORKS.

Springs, where valuable, render land rateable in a higher degree.

SPRINGS are the produce of land; and if turned to valuable account, are rateable with the land in which they are found. Springs cannot be rated distinctly from the land containing them, because that would be rating profits which are difficult to ascertain, and the springs occupy a part of the soil. The additional rate must be laid on the land on account of its containing a natural production, which renders it of greater annual value.

Water conveyed out of one township into another.

Also where a natural spring arises in one township, and is conveyed by a cut or pipes into another, and there makes a profit, by being distributed for the use of the inhabitants, the land containing the spring must bear an additional rate according to its improved value, acquired by the sale of water.

"The New River company supply great part of London and Westminster with water from a spring rising in Chadwell Mead, in the liberty of Amwell, by means of a cut, called the New River, leading from the spring to a reservoir at Islington, whence it is distributed by engines and pipes to different parts of the metropolis, from which the company derive a considerable profit beyond the sum on which the property in question was rated. It was described in the rate as "land in Chadwell Mead;" it contained about two acres, and consisted solely of the basin in which the spring rises, and so much of the cut from thence, called the New River, as lies in the liberty of Amwell. The sessions found that the annual value of the land, if not covered with water, would be *5l.*; that the whole profits of the company arise from the sale of the water, no part of which is distributed, nor is any received, or becomes due in Amwell. If the advantage which the company derives from the use of the spring may, by law, be included in the rate upon the canal, the land and the spring

together are of the annual value at which they are rated; that is, 300*l.* per annum. The Court held the rate good, upon the authority of R. *v.* Miller. There is land and water inclosed in a basin, which falls within the description of land; and though a portion of its profits is derived from pipes, through which it is distributed in other places, it is found to have a certain ascertained value at the fountain head."

Water pipes and cocks.

Where profit arises from letting water pipes and cocks in streets or other places, which are connected with main pipes for the purpose of supplying the inhabitants of towns with water, the company, or proprietor of the water-works, is rateable according to the annual value yielded by the letting of such pipes and cocks to the township in which they are placed. The rate on pipes in the street must be considered as distinct from the rate on the water, if the spring is not in the same township. The pipes would be of no use without the water; but as the water would not be obtained in the streets without the pipes, they undoubtedly are

valuable, and the proportion must be determined by the assessors, and included in the rate. Water is rateable at the fountain-head, if any thing is given for it, as the field or place in which it is paid is more valuable. It is quite immaterial whether water is conveyed by pipes or water barrels to the streets, as it becomes rateable where it is saleable, or where it bears a local value. The spring is the visible property, and water is the produce.

Reservoirs and pipes.

Where proprietors of water-works have their reservoir and pipes in the township where the water is distributed, such proprietors are rateable for both, and not the inhabitants to whom they are let. As a company formed for supplying the town and neighbourhood of Rochdale with water, and by act of parliament laid main pipes under the streets and highways; the inhabitants were at the expence of putting down smaller pipes, to convey the water from the main pipes to their respective houses, and paid rent to the company for the water according to mutual agreement. The com-

pany were held rateable for the rents of the water and the pipes. Land is rateable for all improvements made upon it; and when water is collected for the purpose of sale, or letting at certain rents, it is private property, the same as the land or building in which it is inclosed.

Water-works liable to be rated to the townships where they are situate.

"The 6 Geo. 3. passed for better supplying the city, liberties, and precinct of Bath with water; and after reciting that there were springs of water in the neighbourhood belonging to the corporation, enacted, that it should have power and authority to cause water to be conveyed from such springs to the city, and gave the corporation authority to enter upon and break the soil of any public highway or waste, and the soil of any private grounds within two miles of the city, and the soil or pavement of any streets within the said city, in order to draw and collect the water of the said springs, and to make reservoirs and erect conduits, water-houses, and engines necessary for keeping and distributing the water, &c. and lay under ground aqueducts and pipes for the

same purpose; and it vested the right and property of *all* these in the corporation. The corporation made several reservoirs in the parishes of Lyncomb and Widcomb, where the springs were situate, which reservoirs, by means of aqueducts and pipes laid under ground, partly in the same parish, and then passing through that of St. James into the parish of St. Peter and Paul's in Bath, supplied that city with water, producing to the corporation a clear annual profit of 600*l.* The Court were of opinion, that as the corporation were not residents in Lyncomb and Widcomb, they could not be charged *eo nomine* as inhabitants, but only as occupiers of the reservoirs they were empowered to make, and in which the water is kept; and that such reservoirs and waters kept therein are comprehended within the legal description of land, and were rateable as local and visible property within the parish of L. and W. But they were further of opinion, that the corporation were only liable to be rated for the profits collected in that parish, and not for the whole

profits of the water which flows from the springs and reservoirs. For as the water was conveyed from the reservoirs in L. and W., and distributed through several parishes in Bath, and as not only the apparatus, but the soil itself, in those parishes, on which the pipes rest, must be considered as conducive to, and acquiring the water rents or profits; they were liable to be rated *pro tanto* in the other parishes as occupiers of local visible property there."

RIVER AND CANAL TOLLS.

It has been shown that land and buildings are rateable to the district in which they are situate, on account of their existence within it, and without reference to the residence of their occupier. The profits of any thing attached to land and buildings is also rateable, if the occupier reside in the same parish; but when a person has profits yielded from something attached to real property in another parish, and of which he has no possession, great doubts have been entertained as to his liability to the tax. The statute provides, that every *occupier* of lands and houses shall be taxed to the relief of the poor; and the question is, Whether property, so circumstanced, can be said to be occupied?

Tolls are rateable where they become due.

The tolls of a navigable river become due, not within every township through which it passes, but at the locks or other places on the line appointed by the company; therefore if canals, or navigable rivers, are only rateable where the tolls become due, several townships, through which they pass, may receive no rate for the ground they cover. This would evidently be an unequal way of apportioning the rate, as only part of the canal would be rateable.

It is held by some, that the proprietors of a canal cannot be termed the rateable occupiers in the strict legal sense of the word; for when a share of a canal is sold, or otherwise transferred, possession cannot be given of any certain piece of land, nor can any particular part of the canal be pointed out as the property disposed of. But several judges have declared that property has been decided as *occupied* within the meaning of the statute, although not considered as such in the common acceptation of the word in law. It seems reasonable, also, that if one

species of property be rateable according to its annual profits, another should not be exempt merely on account of its not being particularly described in the statute.

The act of parliament, on which the provision of the poor is grounded; namely, the 43d of Elizabeth, was passed before canals were in use, and, consequently, does not describe the manner of rating them. It, however, certainly meant, that annual profits arising out of property should be subject to the tax; for it is stated, that assessments "are to be gathered out of the same parish, accordingly to the ability of the same parish;" evidently meaning that the occupiers of all descriptions of property should contribute in proportion to the benefit derived by each within the district of the rate. By forming the canal, the soil is broken up, and the space is covered with water and banks, thus destroying the ability of the land from yielding its annual value in the usual way. It is converted to a more valuable purpose, and, of course, yields greater profits, which ought to be rated

Reference to 43 Eliz.

accordingly, if they could be fairly ascertained. Much capital is expended, and each acre is made of, at least, ten-fold value; and if the additional profits be as certain as were the original returns, it seems reasonable they should be taxed on the same principle as imposing more rate on property where new buildings are erected. But such is not the case, at least with that part of the canal which passes through a township where no tolls are collected. It cannot be shown that any direct profit arises, or becomes due, in that particular part; and therefore is held to be no more rateable than a turnpike road through a township in which no tolls are gathered. No freight is due for part of a voyage, unless the whole be completed, and therefore no tolls are due until the vessel reaches its destination, or the extent of the canal.

Rate is due on tolls, not on land occupied by the canal.

The rate is due on tolls, and not on land occupied by the canal or navigable river; and according to the decisions of the judges in the cases hereafter given, the land is exempt from rate. Tolls are considered

rateable property, issuing out of the use of the canal, made out of the land, which would be otherwise subject to rate; and one great principle of rating is, that no property shall be rated twice, the land escapes the tax, and the tolls of the canal are its substitute. The land, converted into a canal has ceased to yield herbage and corn; and being made use of for a different purpose, its profits are rateable in another shape. The judges have not, however, positively decided, that a canal passing through many townships, is not rateable in each, if the land it occupies was rated before the canal was cut. Lord Kenyon said, it would be sufficient to consider that question when it was brought before them. But it appears evident, that if the judges decided that tolls are rateable for the whole line of canal where they become due, that the intermediate townships must be considered exempt, otherwise the profits of the land would be rated twice, which would be illegal. It has been argued in Court that the profits of the whole line of canal should be divided

amongst the townships through which it passes, and rated according to the length contained in each; but as this position could not be supported by reference to the statute, or by any legal precedent, it was over-ruled. No valuable interest could be proved to arise, or become due, from the canal within the limits of each township, unless goods were there landed. Besides, some parts of a canal are more valuable than others, especially near market towns or locks, so that it would be difficult, if not impossible, to distinguish their relative value.

Rate cannot be charged on the tonnage per mile.

It has also been argued, that when the tonnage is charged at so much per mile, that the freight is due at the end of each mile; and as it was agreed that tolls were rateable where due, every township would contribute its fair proportion of assessment, by rating the proprietors of the canal for all their profits by the mile, and causing them to be rated to the townships through which the canal passes, according to its relative extent in each. But this mode of

rating was shown to be different from the legal provision of the statute; which, according to the construction put upon it by the judges, enacts that property shall be rateable in those townships in which its profits become due. And although the freight on a canal may be charged at so much per mile, yet nothing would be due, or could be recovered, until the vessel arrived where the goods were bound to, or at the end of the canal. A vessel enters a canal under an impression of completing the voyage for which it is bound, or reaching the end of it; and unless this be accomplished, the canal is useless, and no tolls can be demanded. Therefore it is concluded, that as no profit can be found to arise at the completion of each mile, the rate cannot be laid by the mile.

Tolls rateable only in the townships where they become due.

It will be seen, in a following case, that the Aire and Calder Navigation passes through many townships, but is only rateable in those where tolls are received. There are other canals, however, which have been made and rated more recently,

Sometimes rates are charged according to the length of canal in each township.

which are taxed on the whole length, according to the extent of ground occupied by the canal in each township, without regard to the place where the tolls are collected, or where they become due. The rate is laid in each township, in proportion to the quality and value of the land adjoining the canal; and thus the assessments are exacted on the same scale of value as if the canal had never been made. This mode is not sanctioned by courts of law, but is considered an arrangement amongst the parishes through which the canal extends; and if no objections be raised against it by the inhabitants, it is presumed that the true object of rating is gained, so long as each rate-payer feels satisfied. It is difficult to decide how canals should be rated, as no rule can strictly apply to all cases which might be produced. The latter mode is liable to objection, on the ground, that the rates are not made payable for the annual profits of land occupied by the canal, nor according to its improved value. If the same benefit be

derived from laying out capital in digging a channel and forming banks, as from building a house, or making other substantial improvements, it seems equitable, if not legal, that both should be rated alike. A different view seems to have been entertained by the judges in deciding the following cases.

Aire and Calder navigation.

" *Rex* v. *Aire and Calder Navigation*, 2 Term Rep. 660. — The churchwardens and overseers of Leeds in Yorkshire, by an assessment duly made and allowed, assessed the undertakers of the navigation of the rivers Aire and Calder, for the tolls and duties of the said navigation at Leeds, at and after the rate of 1000*l.* per annum; and for their lands, wharfs, houses, warehouses, and other buildings in their own occupation, at and after the rate of 27*l.* per annum. Against the former part of the assessment the defendants appealed to the sessions, who affirmed the rate, stating the following case for the opinion of this Court: — That the rivers Aire and Calder were made na-

vigable by an act of parliament of the 10 & 11 W. 3., which act had been amended by a subsequent act in the 14 G. 3. c. 96.; under both which acts the undertakers are entitled to receive certain tolls and duties therein mentioned, for all goods, &c. carried upon the rivers or cuts therein mentioned, according to the distance which such goods shall be carried. The whole length of the navigation from Leeds to Wheeland measures twenty-nine miles, of which 2790 yards in length, and no more, lie within the local limits of the township of Leeds. The whole tolls and duties arising upon the whole length of the navigation from Leeds to Wheeland, or Selby, from the 1st of January, 1785, to the 1st of January, 1786, amounted to 8234*l.* 6*s.* 2*d.*, exclusive of the tolls and duties arising from the navigation from Wakefield to Wheeland and Selby, and the average amount thereof for three years, before the first of January, 1786, was 7628*l.* 7*s.* The proportion of the tolls arising from the 2790 yards, part of the length of the navigation, and lying within

the local limits of the township of Leeds, amounted to 403*l.* 1*s.* 10*d.* per annum, and though upon the face of the assessment the undertakers stand only assessed at and after the rate of 1000*l.* per annum; yet as the houses and buildings within the township of Leeds are, by the said assessment, rated only at one moiety of the actual rents or real value, the undertakers stand actually assessed at and after the rate of 2000*l.* per annum. The undertakers of the navigation had in a year, commencing in July, 1785, and ending July, 1786, divided the sum of 17,000*l.* profits; but that sum was made up of many articles besides the tolls and duties. The tolls and duties have been regularly and uniformly rated at the towns of Leeds and Wakefield from the year 1713, and at Wakefield from the year 1759, at the annual value of 1200*l.* per annum; the length of the navigation within the local limits of Wakefield being 1189 yards, and the tolls and duties arising upon that branch of the navigation from Wakefield to Selby or Wheeland, being more than that which

arises upon the navigation from Leeds to Selby or Wheeland. The mills, warehouses, and other real property of the undertakers, have been rated, from time to time, in the townships or places where such property lies. But the tolls and duties have not been rated in any of the townships through which the navigation runs between Leeds and Wheeland or Selby, or between Wakefield and Wheeland or Selby, except at the towns of Leeds and Wakefield. From the year 1792, the undertakers have been invariably assessed for the tolls and duties to the maintenance of the poor in the town of Leeds, at the value of 600*l.* per annum; and they or their lessees have paid the assessments according to that value. The tolls and duties arising upon the whole length of the navigation have never in any one year during that space of time amounted to the annual sum of 8234*l.* 6*s.* 2*d.*, but in seven years during that time they have been considerably under that annual sum. In the year 1740, upon an appeal to this Court, it was ordered that the undertakers

should stand assessed at the value of 500*l.* per annum. In every land-tax, from the year 1709, is contained a clause, that the undertakers shall not be assessed to the land-tax in any other part, township, or place, through which the navigation runs, but at the towns of Leeds and Wakefield; and the undertakers have been uniformly assessed at Leeds at the same annual sums for which they have been rated to the poors-rate; and in the above-mentioned act of parliament of the 14th of his present Majesty (Geo. 3.), is contained a clause, which enacts, 'That the rivers, or any of the cuts under the authority of that act, shall not be subject or liable to the payment of any taxes, rates, or assessments, save and except such taxes, rates, and assessments, as had been, and then were, usually charged and assessed thereon.'

"Lord Kenyon, Chief Justice. The great question in this case is, Whether the rate in question on this property has been assessed in a larger proportion than it ought? It is admitted, generally, that this species of pro-

perty is rateable; it is also admitted, that the justices are the proper judges respecting the equality or inequality of the rate. In the case of Rex *v.* Brograve, the Court said, they could not enter into the inequality of the rate, unless it manifestly appeared to be unequal; and this rule appears to have been laid down with great wisdom by the judges who sat in this Court at that time. It has been argued, that as the whole extent of this navigation is many miles, of which that which lies in Leeds forms but a small part, the rate in question exceeds its due proportion; but that is not the rule by which these proportions are to be ascertained. It is well known that the Duke of Bridgewater's navigation at Manchester extends thirty or forty miles, within three miles of the end of which the grand trunk empties itself, and, of course, the tonnage in that part of the navigation exceeds, beyond all comparison, the proportion in any other part of it. So that it is most probable that the part of this navigation which comes into the town of Leeds, is more va-

Court of King's Bench cannot enter into the inequality of a rate, unless it appears unequal on the face of it.

Duke of Bridgewater's canal at Manchester.

luable than any other part. However, I disclaim forming my opinion upon any conjecture of this sort, although it is probably well founded, it being enough for me to say what was said by this Court in the case reported in Burrow, that we cannot enter into the inequality of the rate, unless it be manifestly unequal upon the face of it. Therefore, without entering into any discussion of more points, which are open to it, I am clearly of opinion that this rule ought to be discharged. Buller, justice, after noticing the other points of the case, said, then it becomes necessary to consider those facts in this case, upon which the law arises; and it is material to observe, that it is not stated that the tolls are collected at any other place than Leeds and Wakefield; for if there were any other houses in different parishes at which the tolls are collected, it would make a difference; but on this state of the case, we are bound to take it, that all the tolls are collected at these two places. Taking that fact, therefore, as clear, I think the case which has been de-

cided in this Court, must govern the present. It is material to consider at what place the tolls became due. I agree, that if a person has property in Yorkshire, and receives the profits of it in London, he shall not be rated for it in London; for a toll must be considered to be paid at the place where it becomes due. It is impossible to adopt the argument used at the bar, that the toll becomes due at the end of every mile for that mile; for it is an entire contract to carry the goods the whole distance intended, and the hire is payable at the place to which, by that contract, they are to be carried. The case of Putney Bridge is an illustration of the present: there the bridge is rated in Putney and Fulham parish, at 700*l.* a-year each, there being gates at each end; formerly there was no gate at Putney end, and then the bridge was not assessed in Putney at all."

Tolls are not due at the end of each mile.

Tolls are rateable where goods are delivered.

The following case decides that canal tolls are rateable where goods are delivered, and tolls are due, without regard to the place where those tolls may be paid:—

" *Rex* v. *Page*.—The defendant having been rated towards the relief of the poor of the parish of Newbury, for the tolls of the navigation of the river Kennet, at 33*l*. 6*s*. 8*d*., after the rate of 20*d*. in the pound, on the sum of 400*l*., appealed to the Berkshire quarter sessions, where the rate was confirmed, subject to the opinion of this Court on the following case:—By an act, 1 Geo. 1. for making the river Kennet navigable from Reading to Newbury, in the county of Berks, it is enacted, that in consideration of the great charges and expences the undertakers would be at, not only in making the river navigable, but also in repairing, &c. the works, wears, locks, &c. it shall be lawful for the undertakers, &c. from time to time, and at all times hereafter, to ask, demand, &c. for all and every such goods, &c. that should be carried or conveyed up or down the river Kennet, between Reading and Newbury, the rates and duties thereinafter mentioned, and at such place or places adjoining to the river, as the undertakers, &c. should think fit, viz. for every ton weight R. v. Page.

of goods, &c. that should be carried or conveyed in any boat, barge, or vessel, up the river Kennet from Reading to Newbury, or down the river from Newbury to Reading, any sum not exceeding four shillings; and so proportionally for a greater or less weight, or for a less distance of place, to or from which any goods, &c. should be carried, &c.; and in case of refusal, neglect, or denial of payment, on demand of the several rates, &c., the undertakers, &c., or such other persons as they should appoint respectively, should and might sue for the same by action of debt, or upon the case, in any court of record; or detain or make stay of any goods, or any vessel carrying such goods, for which the rates and prices ought to be paid until they were satisfied, &c. By another act, 7 Geo. 1., after reciting that doubts had arisen, since the passing of the former act, whether the undertakers were, by the said act, empowered to carry the navigation further than to the end of the borough of Newbury, they were empowered to make the river navigable from

the wharf or common landing place, 'in, at, or near Reading, to a place called the Hospital, in the borough of Newbury, under such authorities,' &c. as were contained in the former act. By another act, 3 Geo. 2., the undertakers and proprietors were enabled to 'seize, distrain, or detain any boats, in case of non-payment of the tolls, and to cause the same, &c. so distrained, to be appraised and sold.' The length of the navigation from Reading to Newbury, is 18 miles and two furlongs; 142 yards of which are in the parish of Newbury, being the termination of the navigation. The navigation passes, in its course, through part of the respective parishes of Newbury, Thatcham, Midgham, Brimpton, Woolhampton, Padworth, Aldermaston, Burghfield, Tilchurst, St. Giles, and St. Mary in Reading. The net amount of the tolls arising from the tonnage upon the whole navigation, is of the annual value of 1000*l.* which arises as follows; viz. 400*l.* on the upward bound goods carried up from Reading to Newbury, and landed or unladen in

the parish of Newbury; 400*l.* on goods laden at and carried down from Newbury to Reading; and 200*l.* on goods that pass only part of this navigation, and which never come within the parish of Newbury. All the tolls in respect of this navigation are collected at Aldermaston lock, in the parish of Padworth, about the mid-way between Newbury and Reading, by the agent of F. Page, the appellant, and have been there collected ever since the 5th of February last. By the rate in question, the appellant is rated for the whole amount of the tolls arising from the tonnage of goods carried on the navigation from Reading to Newbury, and land at the basin in the parish of Newbury.

" Lord Kenyon, C. J. This case does not admit of much doubt, whether it be considered on grounds of policy, on the words of this act of parliament, or on authorities. By the terms of this act of parliament, a toll of 4*s.* per ton is imposed on all goods carried up the river Kennet from Reading to Newbury; that toll of 4*s.* is

one integral toll for that integral voyage. The case states, that many barges are navigated on this river, some of which perform the whole voyage up to Newbury, some the whole voyage down to Reading, and some intermediate voyages; and, in ascertaining this rate, the sessions expressly state, that the rate is imposed on the appellant in respect only of the tolls which are received for goods carried up the whole navigation from Reading to Newbury. The cases which have been cited do not bear upon the present. In the Hampton Wick case, the rate was on a piece of ground adjoining the river, which was used as a towing path. There the Court had no difficulty in saying that the occupier ought to be rated for it, because he was in possession of land yielding an annual profit. In Rex *v.* Cardington, it was stated that the tolls became due for passing through every sluice; that, therefore, was a local toll, payable at the place where the sluice was erected. In the Aire and Calder case no integral toll was imposed for the whole navigation, but a

proportionable toll, according to the distance which each vessel should go, at so much per mile; there it was sufficient to say that something was due at the extreme parishes, for which the undertakers were there rateable, without entering into the quantum of the rate. It was not necessary there to determine whether any thing were due in the intermediate parishes, because the tolls became due at so much per mile; it will be sufficient to decide that question whenever it shall arise. But arguments of policy and justice have been now urged; and it has been said, that the tolls should be considered to be due in each parish, in respect of the quantity of land occupied by the navigation: but hard would be the lot of the officers who are to make the rates in these several parishes; they would have to measure not only the length but the breadth of the navigation in each respective parish, and to have to ascertain, with precision, the exact quantity of land covered with water; those difficulties would be insuperable; and it would be in vain to think of rating

at all, if such were the rule. In the case of Putney Bridge, the toll was not apportioned in respect of the quantity of land over which the turnpike road led, but the toll was collected on the spot where it was held rateable. The ground on which my opinion proceeds is, that where a person has a valuable interest in any parish or township, he ought to contribute towards the relief of the poor in that parish, in proportion to such valuable interest. Here the appellant was rated in respect of those tolls only which became due at Newbury, the place where the navigation finishes, and where the goods were delivered. But it is said that they were not, in fact, collected in Newbury, and that they became due where they were collected, the proprietor having power, by the act of parliament, of appointing the place of collection where he pleases. But certainly there is no justice in that; for the proprietor might appoint a place of collection, not in any parish through which the navigation passes. It might as well be contended, that an estate is rateable where

the steward thought proper to receive the rents. I am, therefore, clearly of opinion, that the justices in their sessions have done right in confirming this rate, by which the appellant is assessed only for those tolls which became due at Newbury in respect of the integral voyage from Reading to that place; but I desire that this opinion may not be applied to other cases, where the undertakers of a navigation are entitled to so much per mile for intermediate voyages.

"Ashhurst, Justice. It being stated in the case, that the annual value of the tolls for the whole navigation is 1000*l.*, 400*l.* of which arise for the entire voyage, ending at Newbury, I have no difficulty in saying, that the latter tolls become due at Newbury the instant the goods are landed there. Though the proprietor on this navigation may, for his own convenience, appoint any place on the side of the river to collect the tolls, and though, in fact, they are collected out of the parish of Newbury, yet they become due at the place where the goods are landed. The case of Rivers *v.*

Page, which was cited, I think must have proceeded on some other ground than that stated. I do not see how the owner of the navigation could distrain for the toll till it became due; and the toll did not become due till the voyage was completed. But here I think that the appellant should be rated for 400*l.* in Newbury, because tolls to that amount annually become due in that parish.

" Buller, Justice. Two objections have been made against this rate: if either of them be well founded, the appellant must succeed. First, that the tolls ought to be rated according to the proportion of the navigation in each parish; or, secondly, that they should be rated at Aldermaston, where they are received; for which reason it has been argued, that they become due there. But under the express words of this act of parliament, the proprietor may appoint what place he chooses, from time to time; and, therefore, it would be very inconvenient to fix that as the place in which they should be rated. The true question here is, as it

was in the Aire and Calder navigation, Where did the tolls become due? At common law there could be no doubt about this question; for if the goods be not carried to the place of destination, the captain of the vessel is not entitled to any freight; for this reason, that he has not performed his contract — he must go to the port of delivery before he is entitled to any thing. If that be so at common law, it becomes necessary to enquire whether this act of parliament has made any difference in this case. The statute gives the proprietor of the navigation a toll of 4*s.* per ton for goods carried from Reading to Newbury, and gives him the power of collecting those tolls where he pleases; but that does not alter the contract between the owner of the goods and the proprietor of the navigation. And though, according to the case of Rivers *v.* Page, the tolls may be demanded before the voyage is performed, yet if the voyage be not afterwards completed, the owner of the goods may recover back the tolls in an action for money had and received. The

clause in this act, enabling the proprietor to collect the tolls in any place he chooses, was introduced for his benefit; but still the tolls must be demanded according to the rules of law respecting the carriage of goods from one place to another. This case falls directly within the principle of that of the Aire and Calder; where it was held, that the tolls ought to be rated in the parish where they become due, and that in the place of delivery. In the report of that case it is stated, that the undertakers were entitled to tolls 'according to the distance which such goods should be carried;' that is, the whole voyage. According to my recollection, the act of parliament, in that case, did not say that the undertakers should be entitled for so much for each mile; and though an act does mention the rate per mile, it is only used as the means of ascertaining what is due for the whole voyage; for the toll cannot be due till the voyage be completed.

"Grose, Justice. The short question is, Whether this property be liable to be rated

in Newbury? which depends on this, At what place are the tolls to be considered as property? Most clearly at the place where they become due; and I think they become due where the voyage is completed, for till then the carrier could not recover any thing at common law. But it has been said, that a case was decided in the Common Pleas, in which it was held, that a distress might be taken for tolls before the voyage is perfected. If such were that case, it must have been decided on the special provision of this act, which enables the proprietor of this navigation to collect the tolls where he pleases. But that clause did not mean to say that the tolls did not become due in law at the place where the voyage was completed, and where the goods were landed and delivered. The observation of my brother Buller is decisive of this head — That even after a distress, the owner of the goods might recover back the tolls, if the voyage were not afterwards performed and the goods delivered according to the contract. Then it was argued, that the appel-

lant should be rated for those tolls at Aldermaston, where they are collected; but if we should so determine this case, we should open a door to fraud; for then the proprietor would fix the place of collection in some parish where the poor-rates are the lightest, which could not be within the meaning of the act."

Navigable rivers.

The two foregoing cases refer only to rating the tolls of rivers which were made navigable by act of parliament, and capital invested. The origin of navigable river is somewhat different from that of canals; but both, when made, are rateable on the same principle and in the same manner. The ground of the former was not rateable previously to its being made serviceable; but the soil of the latter was rateable according to its value compared with others in the same township. No one would think of taxing a river which was not navigable, or which yielded no toll, because it was not profitable; but when money is expended in

rendering it navigable and of yearly value, it is then reasonable to assess its proceeds the same as those of other property. That part of the statute which most particularly applies to the rating of canal-tolls sets forth, that competent sums shall be raised by taxation of every occupier of lands, &c. according to the ability of the parish. "Lands" is held to be a comprehensive word, meaning every thing connected with ground, above or below it; and, therefore, by the above clause, as soon as rivers become profitable, they are rateable to the poor. There is no statute which describes the manner of rating navigable rivers; but it is decided by the two cases recited above, that they are only rateable in those townships where tolls become due. This rule is by the following case, Rex *v.* Staffordshire Canal, shown to apply equally to navigable canals made out of land which was previously rated to its respective township. By forming the canal, the surface of the ground is converted to another purpose, and the soil is prevented from yielding its produce in the ordinary way of cultivation;

therefore its profits, arising in a different shape, must be rated in a different manner.

When land is converted into canal, it ceases to be rateable as land.

The ground occupied by the canal ceases to be rateable as land; but its profits now arising from tolls collected for the passage of vessels, are liable to be rated to each township in which the goods or materials are landed.

A vessel laden with goods passing from one place to another does not affect the intermediate townships through which it may pass: therefore, it may be asked, Why should the profits thereby obtained be taxed to the relief of their poor? The goods are brought to the place for which they are destined, for the use of the inhabitants; or, at any rate, they are there made profitable by the charge for carriage, and are liable to create labour by requiring persons to receive and forward them who may become chargeable to the poor-rates. And although by forming a canal, each township through which it passes, and in which no goods are landed or tolls become due, by the use of lock or otherwise, be deprived of the rate

of so much land as is taken to the canal, yet it is at the same time eased of labourers, who might be liable to become paupers by its future cultivation.

Rex v. Staffordshire Canal.

"*Rex* v. *Staffordshire Canal*, 8 Term. Rep. 340. — The defendants appealed to the quarter sessions for the county of Worcester, against a rate made in December last, for the relief of the poor of the chapelry or hamlet of Lower Mitton, in the parish of Kidderminster, in the county of Worcester, whereby they were rated for their basins, their towing-paths, and that part of the canals and the locks lying within Lower Mitton, and for the tolls and duties arising therefrom, due at Lower Mitton, on 1500*l.* at the sum of 75*l.*; for their lands, wharfs, cranes, weighing machines, and timber yards in their own possession, on 12*l.* at the sum of 12*s.*; and for part of Jones's land, in their own possession, on 2*l.* 10*s.* at the sum of 2*s.* 6*d.* On hearing the appeal, the sessions confirmed the rate on the company for their

lands, wharfs, cranes, weighing machines, and timber yards, in their own possession, on 12*l.* at 12*s.*; and for part of Jones's land, also in their possession, on 2*l.* 10*s.* at 2*s.* 6*d.*, without opposition. The court also confirmed the rate on the company for their basins, towing-paths, and that part of their canal, and the locks lying within Lower Mitton, and for the tolls and duties arising therefrom, due at Lower Mitton, on 1500*l.* at 75*l.* in manner following; viz. they confirmed the rate on 75*l.* upon the said 1500*l.* so far as respects 350*l.* (part of the sum of 10,000*l.* after mentioned), payable for and in respect of the lock-duties on passing through the locks lying within Lower Mitton, hereinafter described, without opposition; and they also confirmed the rate of 75*l.* upon the said 1500*l.*, so far as respects the residue of the said 10,000*l.*, after mentioned, payable for and in respect of the tolls and duties due at Lower Mitton, hereinafter also described, subject to the opinion of this court as to the last charge on the following case: — The rate was duly

allowed and published. By an act of 6 Geo. 3. the company are empowered to take rates and duties for tonnage and wharfage for all goods conveyed on the canal, not exceeding $1\frac{1}{2}d.$ per mile for every ton, and so in proportion for any greater or less quantity than a ton; which rates and duties are directed by the act to be paid to such persons, at such places near the canal, in such manner, and under such regulations, as the company shall appoint, with a power of distress in case of non-payment. It is further enacted, that for the more easy collecting of rates and duties, the master, &c. of every vessel navigating on the canal shall give a just account in writing, signed by him, to the collectors of the tonnage or duties, at the places where they attend for that purpose, of the quantities of goods in such vessel, from whence brought, and where they intend to land the same; and if such goods be liable to pay different tolls, then such master, &c. shall specify the quantities liable to the payment of each toll; and in case they neglect or refuse to give such

account, or give a false account, or deliver any part of their loading at any other place than is mentioned in that account, they are to forfeit to the company 10*s.* for every ton of goods so falsely accounted for, &c. over and above the respective rates and duties payable for the same, and recoverable in the same manner, &c. By another act of 10 Geo. 3. the company are authorized to take tonnage proportionably for any less distance than a mile which any commodities shall be conveyed on the canal; to be collected, recovered, and applied as the former tonnage-rates; and the vessels, &c. passing through the two locks erected between the river Severn and the canal basin, are to pay a toll or lock-due at the rate of 1*d.* per ton, in lieu of the tonnage of 1½*d.* per mile, fixed by the said recited act; and the said tolls or lock-dues are to be collected, recovered, and applied as before directed, &c. By the same act of 10 Geo. 3. it is enacted, that the shares of the company, which by the former act the proprietors held in the nature of real estates, shall

be deemed personal estates, &c. The lock-dues received by the company in the last year, for boats and other vessels passing through the said two locks, which locks are locally situate in the hamlet of Lower Mitton, amounted to 350*l.* The tonnage of the goods brought in boats down the canal and landed at Stourport, which is in the hamlet of Lower Mitton and the termination of the canal, or transhipped therefrom on board canal boats to Severn barges, amounted in the year 1798 to 9650*l.*, making, together with the said 350*l.* the sum of 10,000*l.*: which sum of 9650*l.* arose in the following manner; viz. (here the case set forth the different sums received for the tonnage of goods taken in at different places on the canal, showing how much the tonnage amounted to in each parish, reckoning by the number of miles that the canal passed in the several parishes; according to which mode of calculation by the mile, a very small part of the toll arose in Lower Mitton.) But the said sum of 9650*l.* was not received by the company

at Lower Mitton, but at the several places where the goods were shipped. The expences of repairing the basin and that part of the canal which lies within the hamlet amount annually to 540*l.*; other parts of the canal and basins lying out of the hamlet are also repaired at a great annual expence; and the repair of every part contributes to the profits and use of the whole canal. The dividends per share of each proprietor of the canal, for the year 1798, amounted to 32*l.* clear of all expences and deductions. The agents of the company, on receiving accounts in writing of the quantities of goods which are in each vessel, and the places where the same are intended to be landed, in the manner required by the first act, deliver permits to the master, &c. of every such vessel, &c. to navigate the same accordingly upon the canal. The company are not carriers upon the canal, nor the owners of any vessels employed thereon; and the payment of the tolls on goods carried on the canal is, by the direction of the company, made to their

agents at the places where such goods are laden or shipped, and the company consider such places as the places at which they become due under the act. The land used in the canal, the towing-paths, and basins, lying in the hamlet of Lower Mitton, measure eight acres, two roods, and thirteen perches; and the land used in the whole of the canal, towing-paths, and basins measure three hundred and seventy acres, two roods, seven and three quarter perches. The length of the whole canal is forty-six miles and a half, amounting to 81,840 yards; 1367 yards of which, including the length of the basin, and measuring to the Severn lock, being the termination of the canal, lie in the hamlet of Lower Mitton; so that that part of the canal which lies within the hamlet bears to the whole length of the canal the proportion of about one to sixty." Nolan.

Lord Kenyon, Chief Justice, said, "I consider this case is brought forward to give us an opportunity of reviewing the opinions we delivered in the former cases

that have been alluded to: but on reconsideration, I do not see any reason to induce me to change the opinion I then gave. In the first of those, Rex *v.* the Undertakers of the Aire and Calder navigation, which was decided soon after I came into this court, though it differs from the present case, some rules were established applicable to this case. But I cannot distinguish the other case, Rex *v.* Page, from the present in principle and substance, though there are some nice distinctions between them. And if the rules there laid down had occasioned any great inconvenience, the parties interested have had, in the interval of several years, many opportunities to apply to the legislature for a remedy; but no application of that kind having been made, I presume that no inconvenience has resulted from those determinations. This does not appear to be a contest between the parishes through which the canal passes and the company of proprietors, but the company are struggling against the rate altogether. To this company, indeed, as

well as to others of the same kind, the public are much indebted for their undertakings; but they ought to contribute to the relief of the poor, in common with the owners of all other species of property, in proportion to the profits that they acquire. As the company have objected to the present mode of rating, I am anxious to know what other mode they would substitute for it. On this point, however, their counsel have left me in great doubt. They gave me the choice of two modes; they wish the company either to be rated for the whole in the parish where the tolls are received, or for the different parts in the different parishes through which the canal passes, in proportion to the number of miles in each parish; but they have not named that mode on which they choose to rely. I rather think that they would not be satisfied with the first of these methods; because, after receiving the tolls in one parish for the whole voyage, it is too much to say that the company should retain them in the event of the owners of vessels

not being able to go the whole voyage; either on account of the locks being out of repair, the banks giving way, or any other accident of that kind. It is not, therefore, the most convenient place to rate the tolls where they are collected. Then it is said that the other mode of rating should be adopted, because the land, over which the canal passes, was before rateable to the poor in respect of its produce. But insuperable difficulties occur to this mode. It is admitted that all property should be rated to the poor according to its meliorated state; but on account of the difference of the expence attending the cutting of a canal in flat and hilly countries, it is almost impossible to ascertain the precise degree in which the property is meliorated in each particular parish. The bar are already in possession of the reasons we gave in the case of Rex *v.* Page, and, therefore, it is not necessary to repeat them. It seems to me, after reviewing the whole of the subject, and considering which is the most eligible mode of rating the property in question, that the

mode adopted below, is that which approaches nearest to justice. It is sufficient, therefore, to say, that I continue to think that the case of Rex *v.* Page was rightly decided; and as I cannot distinguish this case from that in principle, the present rate must be confirmed.

Grose, Justice. " The great object in this case is to find out the true principle according to which the tolls ought to be rated. This very point was much considered in the case of Rex *v.* Page, where, after the best consideration that I could give to the subject, it appeared to me that tolls of this kind should be rated where they become due; and I cannot, on reconsideration, discover any other mode of rating less exceptionable than that. That mode may possibly be liable to some objection, and so is every other mode that has been suggested; but that mode appears to be most consistent with the justice of the case, and to be attended with fewer difficulties and objections than any other, and it is not inconsistent with any clause in the act of

parliament by which the tolls are imposed. The Lord Chief Justice has stated his objections to both the modes of rating proposed by the company; and I entirely agree with his Lordship on those points. In answer to one argument at the bar, that the money was not paid for the tonnage, but for permission to pass on the navigation, it is sufficient to refer to the act of parliament, which empowers the company to take tonnage for all goods conveyed on the canal, such rates and duties, &c. not exceeding $1\frac{1}{2}d.$ per mile for every ton; the rates, therefore, are not payable until the goods are conveyed, for until they are conveyed it is impossible to say how much will become due. For though the money may be paid in advance for the convenience of the company in many instances, it must be returned if the voyage cannot be completed; because, until the voyage is completed, no money becomes due under the act of parliament. On the whole, therefore, I think that the mode of rating adopted in the case of Rex *v.* Page, which seems less objection-

able than any other, ought to be adopted in the present case.

Lawrence, Justice. "The company, who object to the present mode of rating, say that they should be rated for the tolls either in the parish where they are collected, or in the several parishes through which the canal passes, according to the distance in each. Their counsel would not absolutely choose the first; they seemed rather to prefer the latter mode. But considering that this is a rate on tolls, the proprietors of the tolls must be rated either in the parish where the tolls become due, or in that where they are received; but I think they cannot be rated in the parish where they are actually collected, because many cases might be put in which the tolls, though received, must be returned to the owners of the goods. Therefore, it seems to me that the tolls should be rated in the parish where they become due; that is, where the voyage is complete. And what was said by Mr. J. Buller, in giving his opinion in Rex *v.* Page, comparing this to the case of a car-

rier, deserves great weight. But it has been argued, that this resembles the case of Rex *v.* Cardington, where the tolls became due on passing the sluice; but it must be remembered, that there the toll was paid for the use of the lock; and if the owner of the vessel, after paying the toll, had been prevented pursuing his voyage, he could never have recovered back his money, because he had the use of the lock. Nor is this like the case of a turnpike; for there the tolls are paid for the benefit of the public, and not for the use of any individuals, and those tolls are not the subject of taxation within the 43 Eliz.; there also the money is paid for the privilege of passing through the gate, and the party, having once paid it, cannot, under any circumstances, recover it back again. It seems to me, therefore, that this question was very rightly settled in Rex *v.* Page, which case cannot fairly be distinguished from the present.

Le Blanc, Justice. "This is a rate on tolls, and not on land. It is admitted that

tolls, as such, are rateable property, and that such property is rateable in the parish where it arises; now it was decided in Rex *v.* Cardington, and other cases, that by this expression, 'where it arises,' we are not to understand the parish where the tolls are actually received, but the parish where they become due. The question then in this case is, Where do these tolls become due or payable? It has been said that the tolls are not paid to the company in respect of a contract for the carriage of goods, but for the privilege or liberty of carrying goods on the navigation: but in each instance, it is an entire contract to pay so much for the liberty of carrying goods for a certain space along the canal, and until the contract on the part of the company, giving the privilege of carrying the goods on their navigation, is performed, nothing becomes due to them. If the contract be for sending goods the whole length of the navigation, the contract is not performed on their part, and nothing becomes due to them for tolls

until the goods are conveyed to Stourport; if the contract be for conveying goods an indeterminate voyage, to some place short of the whole distance, the tolls do not become due until such shorter voyage is performed. But this very question has been already determined in the case so frequently alluded to, Rex *v.* Page; and unless the court felt that there were some strong objections to the mode of rating adopted in that case, that decision ought to govern the present case. Now, no mode of rating these tolls more consistent with justice or with policy than the rule there adopted has been pointed out. The counsel for this company have, indeed, contended that this case is distinguished from that in this respect — that there the toll was limited at a gross sum (4*s.* per ton) for the whole voyage, and so proportionably for a greater or less distance; whereas here the toll is 1½*d.* per ton per mile: but there is not in reason any distinction between the two cases on that account. In the one case, as well as in

the other, the rate of tonnage is calculated at so much per mile. Not being able, therefore, to distinguish that case from the present, nor seeing any ground on which I can say that the decision is not consistent with the rules of law or public policy, I am of opinion that the order of sessions must be confirmed."

FERRY TOLLS.

When ferry tolls are rateable.

It has been decided that ferry tolls are not rateable, unless the occupier reside in the parish, or be a holder of real property therein. For a person to be rateable to any township, he must, by the provision of the Act, be either an inhabitant or an occupier of visible property therein; and if the river divide two townships, the vessel cannot be said to be in either of them. But if a person employ a boat to convey passengers or goods across a river for hire, and occupy land on either side, he is rateable for his profits to the township in which he is an occupier; and if he hold land, on which he lands goods or passengers on both sides of the river, the rate of his profits is divided. A person occupying land on one side of a river in one township, and delivering passengers or goods on the highway

of another, is rateable for the whole of his profits in the former, and is not rateable to the parish to which the highway belongs. The highway cannot be termed property in the occupation of any person, but is common to all persons alike. Tolls are rateable when connected with any tangible or fixed property, such as towing paths, locks, wharfs, or warehouses; but when they are connected with no real property, they are exempt. Turnpikes are not rateable on account of the tolls being collected for the public; and if they were private property, the toll-house would only be rateable, and not the tolls on their own account.

Ferry tolls are rateable according to annual value.

Ferry tolls are rateable, along with the ground to which they are attached, in the occupation of the ferryman, according to the average annual profits gained by the concern. This is ascertained by learning, or forming an estimate of, the rent that may be obtained for the privilege of working the ferry.

TITHES.

THE statute of the 43 Eliz. provides, that tithes impropriate, and propriations of tithes are rateable to the relief of the poor. Tithes impropriate are tithes payable to the laity; and propriations of tithes, or, more properly speaking, appropriations of tithes, are those which remain in the hands of the clergy, or which belong to some religious institution.

Great and small tithes.

Tithes are either great or small. Great tithes are those of corn, hay, and wood. Small tithes are those of milk, cheese, wool, lamb, calves, &c. The great tithes are generally paid to the rector, or person to whom they are let, and the small tithes to the vicar. Where there is no modus, or other grounds of exemption, tithes are due upon every thing which makes a certain annual increase; but not on minerals, deer,

hawks, or things of a wild nature, the profits of which not being annual but casual. Tithe is due on the agistment of cattle, which is estimated, not by the profit of depasturing them, for that is uncertain, but according to the worth of their keep by the week. This arrangement removes the difficulty which would be unavoidable in gathering tithe according to the fluctuations of profit, or according to the good or bad skill displayed in the sale or purchase of cattle.

Gardens, orchards, and nursery grounds are titheable according to their produce, if sold in the way of trade.

Rate on tithe-free lands.

The liability of land to the exaction of tithe varies considerably in different situations. Some lands are entirely tithe-free, and others are subject only to corn-tithes, being exempt from the payment of hay-tithe and small tithes by a modus. Tithe-free lands, or those which are partially so, are in the same proportion worth more rent to the proprietor of the soil; and the whole of the rate to the poor on tithe-free land is

payable by the occupier, and not divided, as on titheable land, betwixt him and the tithe-holder.

Parsonage houses and glebe lands are rateable, whether in the hands of the clergy or laity, as well as the tithes of the parish; it being intended by the framers of the statute to subject the occupiers of all property to contribute towards the relief of the poor according to the benefit they derive in the parish. The judges also decided, in 1633, that "the parson, or vicar presentative, shall bear according to the reasonable value of his parsonage, having consideration to just deductions." Moduses and agistment tithe are also rateable, according to their annual value, as near as they can be fairly ascertained, making allowance for the fluctuation in the value of the latter. Parsonage houses and glebe lands.

Oblations, offerings, rectorial and vicarial dues, and even a pension payable to the clergyman, are likewise rateable, but are subject to great deductions for trouble in ascertaining and collecting them. It is only their net annual value, after allowing ade- Oblations, offerings, and dues.

quately for necessary expences, which is the proper subject of the rate.

Composition of tithes.

Great tithes are either gathered in kind, or paid by composition amongst the tenantry, to raise the rent contracted for with the tithe landlord. The rate upon the latter mode is easily ascertained, the rent charged being the rateable annual value of the tithe; which is assessed in the same proportion of poundage, as on rent payable to the proprietor of the soil, where the ground is tenanted; or according to the supposed annual value when occupied by the owner.

Tithe in kind.

Where tithes are gathered in kind, their rate must be estimated from the value of the produce, making due allowance for trouble in collecting, and for greater risk and trouble in housing, thrashing out, and marketing so many small quantities of produce.

Land is rated according to tithe upon it.

The value of tithes is, in some measure, regulated by the value of the land on which they are exacted; and as all titheable lands are worth less rent to the proprietor by the value of such tithes, so those which are

tithe-free, or partly exempt, are in the same proportion rendered more valuable and rateable in a higher degree. The question, whether land is titheable or exempt, is of importance to the landlord in fixing the rent, and is of the same consequence in fixing the rate.

The parson is rateable for tithes let singly to tenants.

" Where the parson lets his tithes to the tenant of the land from whom they are due, it seems that the former is to be considered as the occupier, and rated to the poor as such. For it has been observed, that the letting is but an agreement with the tenant of the land to retain the tithes, and he is to be considered either as a person who buys them, or as one excused from paying any; and the clergyman continues occupier in point of law. When the parson, or his farmer, receives a sum of money in lieu of tithe; that is, in law, a receipt of the tithe, with this only difference, that it is a tithe in kind. In the case of a composition, as this is, or a modus, it was never thought but that the parson was occupier of the tithe,

there being no colour to charge the tenant of the land.

A person farming the tithes is rateable for them.

" Also if one farms the parson's tithes, and agrees, by parol, with the tenant of the land, that, in consideration of his paying so much, he shall retain the tithes for the year, and gather in the whole crop without dividing; this is not an under-lease of a thing, which lies only in a grant, and the tithe-farmer is the occupier to be rated, and not the parson or tenant of the land."

Exemption from tithe.

Exemption from tithe arises either from composition, modus, or immemorial custom. Lands, which belonged to any of the monasteries, dissolved by the 31 Hen. 8., are now free from tithe; but this privilege does not extend to lands belonging to the lesser monasteries, which were dissolved by the 27 Hen. 8. In some places it has been customary, time out of mind, to give, in lieu of tithe, an equivalent in work and labour, as by gathering the eleventh or twelfth cock of hay instead of the tenth, giving the difference for the trouble of making the hay.

By the statute of 13 Eliz. no parson or vicar shall make a conveyance or composition of the estate of their churches for a longer period than their lives, or twenty-one years. But for the above, or any lesser term, tithes may be contracted or compounded for betwixt the rector or lay impropriator, and the proprietor of the land, which will be binding to both parties, and prevent any gathering in kind during the term. The small moduses, which are not paid in lieu of tithe, hay, or small tithes, were fixed previous to the 13 Eliz., and have been continued down to the present time, without being altered or affected by that Act. "For a modus or equivalent to be good, it must be certain and invariable; it must be beneficial to the parson; it must be permanent and durable; and, lastly, it must be a fair and equitable composition, and such as has existed time out of mind. Time out of mind, as explained in the first part, is considered to commence from the beginning of the reign of Richard I., or before the year 1189."

Tithes cannot be taken for a longer term than for the parson's life or 21 years.

Moduses.

Tithe must be deducted from the value of land in laying rate on titheable land.

In ascertaining the rent of land subject to tithes, the value of the latter must be deducted from the annual value of the use of the soil. The same steps must be taken in estimating the rate. The proportion which each bears to the other, is regulated by local circumstances, and the extent of the liability of land to tithe on its produce.

How tithes are estimated.

The following estimates may serve to give an idea of the manner in which the proportions of tithe are ascertained. On regular arable farms, where about one-third of the land is kept in permanent grass, and on which full tithes are due, one-fifth part of the annual value or rent that the farm would be worth if tithe-free is deemed a fair compensation; that is, land free from tithe, and worth 35*s.* per acre, is only worth 28*s.* per acre if subject to the payment of all tithes, leaving the difference 7*s.*, which is one-fifth of the whole, as the value of the full tithes.

Suppose a farm of one hundred acres be divided as follows, and it be required

to ascertain the value of the full tithes upon it.

			£.	s.	d.
20	acres Wheat -	worth	160	0	0
10	Barley -		70	0	0
5	Oats - -		25	0	0
5	Beans -		25	0	0
10	Clover - -		35	0	0
10	Turnips -		35	0	0
10	Fallow - -		0	0	0
30	Hay and Agistment		75	0	0
100		10)	425	0	0
			42	10	0
	Expences of collecting, &c.		7	10	0
			35	0	0

This sum averages seven shillings per acre on the whole farm, and is one-fifth of the whole rent.

If the above farm were subject to corn tithes only, it would stand thus: —

			£.	s.	d.
20	acres Wheat -	worth	160	0	0
10	Barley - -		70	0	0
5	Oats -		25	0	0
5	Beans - -		25	0	0
40		10)	280	0	0
			28	0	0
	Expences of collecting, &c.		4	0	0
			24	0	0

This sum averages 12*s.* per acre on 40 acres of land under a crop of corn, and 6*s.* 10*d.* per acre on 70 acres of arable land.

Vicarial tithes.

The value of vicarial hay and clover tithes together, is generally found to average about half as much as corn tithes; therefore, in order to find the value of each separately, divide the above average of full tithes, 7*s.*, by 3, which gives 2*s.* 4*d.* the value of clover, hay and vicarial tithes, and leaves 4*s.* 8*d.* the average value of corn tithes on all the farm, including the grass land and fallow ground. So that in forming the rates payable in respect of rent or annual value, and tithes for the average of the above farm, their relative proportions would stand thus: —

Average annual value per acre, if free from tithe - - - 35*s.*

Ditto - Ditto, if titheable, 28*s.*
And tithe - 7*s.*

Ditto - Ditto, if subject to corn-tithe only, 30*s.* 4*d.*

And 4*s.* 8*d.* the average annual value per acre of the corn-tithe.

Value of tithes vary in different situations.

On the above estimates, which are made on good land, it may be proper to observe, that the quantity and value of produce are so variable in different seasons and situations, that they cannot apply to all cases. The value of tithes, and the rates consequent thereon, can only be ascertained by making inquiry into the customs and prices of the neighbourhood, and judging from experience founded on the above principles of computation. The rent, assessments, and tithe together, form the annual value of land; and in proportion as the two latter increase in amount, the former, namely, the rent or annual rate, must be diminished, in order that a just equality may be preserved.

MINES.

No mines are rateable except coal mines.

THE statute for the provision of the poor, made in the 43 Eliz., enacts, that coal mines are rateable property. None other mines, or fossil productions, being mentioned in that Act, it is held that none other are rateable. Several other species of mines, such as those of lead, tin, copper and iron, were worked at the time the above Act was made; and it has been since decided, that if it were meant by the Legislature to assess them to the relief of the poor, they would have been introduced into the statute. The reasons for their exemption have been stated as follows: — "They are liable to more hazard and expence, and are governed by particular laws; the worker of them is not always the owner of the soil; a local law

gives the right of working, under certain regulations and conditions, to other persons than owners or lessors, or persons having any right or property in them. There is infinite expence and anxiety in finding lead mines, and the finder is obliged to pay certain proportions to the owner of the land; and there is a much greater risk in search after them, even so much as that a man may be ruined by it instead of succeeding." But in working lead or tin mines, demised for a number of years at a stated rent, and yielding lot and cope, and a certain sum, as sixpence or eight-pence for every load; if both these be received by the landlord, without risk or expence, he is rateable for the lot and cope according to their annual value, and also as that annual value may vary. It seems reasonable that property, so circumstanced, should be assessed, on the broad principle of every person contributing to the relief of the poor according to the benefit he derives in the parish where his profits arise. Lot and cope are a yearly revenue, not casual or accidental, but sure

Leadmines.

and profitable; and are held rateable, although the mine be exempt, from which the lot and cope are exacted. The tenant is not rateable for the profits he may derive from working the mine, therefore the ore is not twice rated.

The lot and cope of mines is rateable.

The proprietor of the mine is liable to the payment of poor-rates for lot and cope, whether he reside in the parish or not. The profit is made and becomes due, as soon as the metal or ore is got. In a case where a monied duty of sixpence per load was paid on lead ore raised from the mine; and although it did not appear whether the landlord resided in the parish, Lord Mansfield, Chief Justice, considered it as visible real property, for which the landlord was rateable wherever he resided. "The poors-rate," said he, "is not a tax upon land, but a personal charge in respect of the land. The present is a personal charge, by reason of the annual profits which the landlord receives out of the land, and which is not charged at all before to the poor. In general, the farmer or occupier of land, and

not the landlord, is liable to this tax; for it arises by reason of the land in the parish; and the landlord is never assessed for the rent, because that would be a double assessment, as his lessee has paid before. Lead mines are not within the statute 43 Eliz. c. 2. They are in themselves uncertain, and may prove unsuccessful to the adventurer. Taxes, therefore, upon the adventurer would be hard, and they are excused. But the person, lord, or landlord, who, in case they do prove of value, receives a stipulated benefit from the profits or value of them, is not excusable upon the same ground, and therefore is expressly charged to the land-tax, as that falls upon the landlord. He is alike liable to the poors-rate for his visible real property in the parish, though when the poors-rate is a charge on the lessee, the landlord does not pay in respect of his rent. When the adventurer, as lessee of the mine, pays nothing, it is no double tax in any light; because the lord pays not for that which the lessee or adventurer is excused from paying for, but the

lord pays for his own. It is not mere casual profit, but an annual revenue, if any; and very different from the casual profits of a manor, which are not annual, for there may be none for years. But if the mine produce profit to the miner, the lord's share is certain, annual; and annual rent is paid for it constantly. The miner is obliged to pay certain proportions to the owner of the land. What reason, then, is there to exempt these proportionable revenues? It makes no difference to the adventurer, it does not prejudice nor benefit him. But as such obligatory payment is in respect of the lands, the landowner ought not to receive it clearer or neater than any other part of his estate, when he is at no trouble, expence, or possible risk."

Exemption not extended to slate-works.

By the statute particularly mentioning coal mines as rateable to the poor, all other mines are considered exempt, and it has been attempted to extend the exception to slate-works or slate-mines. But it was shown that the word *mine* signifies a place under ground where minerals or metals are

dug up, and cannot be applied to ground where slate, flags, or stone is got, such being more properly called quarries. If such grounds of exemption were admitted, the places where gravel, sand, marl, or clay, are procured, would be equally exonerated; all which have always been considered rateable, and cannot be denominated mines.

Landlord is rateable for lot and cope.

No person is rateable for any thing he does not actually occupy, or for which no profit is at any time returned. Lot and cope of mines, being a portion of the minerals reserved to the landlord, as his sole profit for the use of the land, without risk or expence on his part, he is the rateable occupier; being, as it were, in possession of so much land as yields him a share of its produce. But if the owner let the mine entirely at a certain monied rent, without reserving lot and cope, neither the landlord nor tenant is rateable. Or, if the acknowledgment for the land is made by the payment of a certain quantity of the mineral, when manufactured; for instance, as so much smelted lead no rate can be

exacted. For the quality of the ore is changed before it is made profitable to the landlord; and the smelting works are rateable according to their annual value. The ore itself, when undergoing the process of smelting, is a species of personal property, and is not rateable unless personal property be rated in the township.

A case on this point has been recently tried in the King's Bench, "The King against the Earl of Pomfret, and others:" which, after being well argued by able counsel on both sides, was summed up, and decided by Lord Ellenborough, Chief Justice. "This came before the Court on a motion to quash an order of sessions, made at the hearing of an appeal preferred by Lord Pomfret, and others, against a poor-rate in the parish of De Reeth. The sessions confirmed the rate, subject to the opinion of this Court as to the question, whether the appellants were liable to be rated, upon a case, stating, that the appellants were the owners of the lead ore, in certain lead mines within the township;

not owners of the soil of the wastes in which the mines are situate, but merely entitled to the lead, copper, and iron, contained in the veins below the soil. That by an indenture of lease, bearing date the 31st of July, 1811, the appellants leased to Messrs. Anderson all their mines of lead, and lead ore, with certain smelting mills, and other premises therein described; and with proper powers for working the mines for a term of twenty-one years, yielding and paying to the appellants a certain pecuniary rent therein mentioned, and also yielding and paying, rendering and delivering to the appellants, their heirs and assigns, from time to time during the said term thereby granted, at or in the smelting mill or place, situate within the manor of Healaugh Old Land and Healaugh New Land, where the same should have been smelted, one full fifth part, dole, or share of all the best ore-hearth lead; and one full fifth part, dole, or share of all the hag, or hag-hearth lead, that should be smelted from the ore, to be from time to time dug,

wrought, and raised in, from, and out of, the said mines and premises, or any of them, or any part thereof: the same to be delivered to the said appellants, their heirs or assigns, free and clear of, and from all and all manner of dues, duties, costs, charges, and expences, and of and from the poor-rates, and all other parliamentary and parochial taxes, rates, assessments, or impositions whatsoever, which then were taxed, charged, rated, assessed, or imposed, or which should at any times or time during the term thereby granted be taxed, charged, rated, assessed, or imposed upon, or for, or in respect of, the said lead or lead ore, so to be dug, wrought, smelted, rendered, and delivered as aforesaid, or upon, or for, or in respect of, the said mines and premises, or any of them, or any part thereof. The lease contained a covenant on the part of the lessees to deliver the fifth dole, or share, as often as the quantity smelted should amount to four hundred pieces, or at the end of every four weeks, at the option of the lessors.

The rate was imposed upon the appellants in respect of the duty-lead reserved by the above lease. This case was argued before us with great ingenuity and learning; and all the authorities that bear upon the point were cited in the course of the argument. The counsel in support of the order of sessions, relied on the cases of Rowle *v.* Gells, Cowp. 451., The King *v.* St. Agnes, 3 T. R. 480., and the King *v.* the Baptist Mill Company, 1 Maule and Selwyn, 612., and contended, that this case was not substantially different from that of Rowles *v.* Gells, which has been recognised and followed in the two other cases; and that we ought not to depart from the principle there established upon nice and subtle distinctions. We are of opinion, however, that the present case is substantially different from all of them; and that a decision against the present rate will not break in upon the principle, or overturn the authority of any one of them. In all those cases, the rights of the parties rated, who were the owners of the lessees of the mines, and of the adven-

turers or miners, by whom the mines were worked, depended upon the particular custom of the place; and by that custom the parties rated were entitled to, and received a certain portion of, the mine, or mineral, in its primitive mineral state, and the Court, with some degree of refinement, considered the parties entitled to, and receiving such portion of, the mineral, as being occupiers of a portion of the mines; that is, occupiers of land within the terms of the statute of Elizabeth; and in the case of the Baptist Mill Company, made it part of the foundation of their judgment, that the adventurers did not stand in the relation of tenants to the owners of the mine, but in that of mere workmen. It is true, that in Rowles *v.* Gells, the mineral underwent some sort of process before it was delivered to the plaintiff; for the case states, that the duty of lot was the thirteenth dish or measure of lead ore, got dressed and made merchantable, which we understand to mean, made merchantable by scouring or dressing; a process thereby separating the ore from the

other matters dug up with it from the mine, but not altering, in any degree, its original or native quality or character. The plaintiff, in that case, was also rated for cope, which is explained to be a small pecuniary payment; but no notice was taken of that circumstance in the argument or judgment, nor could it have been effectually taken; because if the plaintiff was rateable for the lot, he would, of course, have some rateable property within the parish, and, consequently, his action of trespass could not be maintainable. In the case of the King *v.* St. Agnes, the party was entitled to toll and farm tin, which are stated portions of the tin gotten. In the case of the Baptist Mill Company, the party was entitled to a definite portion of the calamine stone found or gotten within his district. In the present case, the rights of the parties rated, who are the appellants, and those of the persons by whom the mines are worked, depend upon the terms of a written contract; a lease, by the terms whereof the appellants have demised to others the whole

of their mines and veins of lead and lead ore; and therefore they cannot be said to be the occupiers of any part, unless the render or reservation of one-fifth part of the lead to be smelted from the ore raised from the mines can operate as an exception of a portion of the mines, or of the ore raised from them. A reservation of a part of the thing demised cannot properly operate as a render, and it may be admitted that it operates as an exception. But this is not a reservation of any part of the ore, or of the mineral, in its natural and primitive state, but of something of a quality, name, and character, entirely different; of a metal produced from that mineral by the laborious and expensive process of smelting, in which the native mineral is mixed with another matter, viz. with coal or charcoal; and by the effects of fire upon both a metal is obtained, which is to be considered, for this purpose at least, as entirely different from either of the two, and rather as a manufacture of art and labour, resulting from the use and application of those materials, than

the original earth itself. This lease puts the parties unequivocally in the character of landlords and tenants. The reasons upon which the Court relied in the King *v.* the Baptist Mill Company, do not apply to this case; but it is brought substantially within the principle of the case of the King *v.* the Bishop of Rochester, 12 East, 353. For these reasons we are of opinion, that the appellants were not liable to be rated for the lead rendered to them under the lease, and consequently that the order of sessions must be quashed, and the rate amended by striking out this part of it. There was another case against the same parties in respect of duty-lead, payable to them under the same circumstances, in the township of Millbecks, upon which the same judgment must be given."

Landlord's share not rateable when received in manufactured metal.

Thus the poors-rate on mines may be evaded by the proprietor of the soil receiving his share of the produce out of the metal after it has been manufactured; whereas if he receive a certain proportion of the mineral in its raw state, or a stated sum in

lieu thereof, he is rateable for the same according to the net annual profit. In the first case, it would be difficult to ascertain the annual value due to the landlord in a succeeding year. Much would depend upon the extent of the mineral in the ground; and if it were contracted for by the year, or for a term of years, and the vein should be worn out before the end of the term, the concern would be unprofitable. The mineral which is sought for lies hidden in the earth, and therefore its value cannot be known until it be got. Much capital is expended in sinking shafts, erecting engines, and drying the ground, before any profit can be expected, and then the risk is great whether the speculation prove beneficial. Thus the profits of mines are more hazardous than those of other property; and if they were liable to be rated in all cases, it would be extremely difficult, if not impossible, to fix a suitable rate upon them. It may be observed, however, that the profits of all trades and occupations are liable to vary and prove unprofitable at a time when

least expected, and that it seems equitable if mines be not rateable when unprofitable, every other trade and occupation should be exonerated when in the same situation. But there is a great difference betwixt the uncertain amount of profit, and the uncertainty of profit altogether. The former may be applied to a farm or established trade, and the latter to a mine, and both form, no doubt, the distinction contemplated by the legislature in framing the statute.

Reason for rating coal mines.

It has been mentioned before that coal mines are rateable property. The getting of coal is attended with little risk: it lies in beds of a regular thickness for a considerable extent, so that estimates may be formed beforehand of the probable expence required to bring up a certain quantity, and of its value. It is, therefore, most frequently the fault or bad luck of the undertaker of the colliery, if the concern prove unprofitable.

How mines are rated.

Coal mines are rateable according to their net annual value during the time they are

worked. The mine itself is considered as the capital, and the coals brought to the mouth of the pit as its return. The rate is ascertained by deducting the expences of getting from the average annual value of the coals; one half the remainder is, in most cases, considered the amount of rate, from which the assessments are computed, allowing the other half for contingent risks and expences.

Coal mines not rateable when not used.

When coal pits cease to be worked, they cease to be rateable; their annual value is then suspended or relinquished, the same as a house unoccupied. A person took a coal mine on a lease for a number of years, at a rent of 200*l.* per annum, which he agreed to pay during the term, whether the mine yielded coal or not. The mine ceased to be worked before the expiration of the term; therefore it was decided in Court to be no longer rateable, although the rent was due throughout the term.

Coal mines must not be coupled in the rate with lead, iron, or other metals, which

are not rateable. In the King's Bench, a rate was quashed for having "iron and coal mines" joined together in one sum. Iron mines not being rateable property, it was decided that coal mines only should have been mentioned in the rate.

WOODS.

Underwood is rateable.

THE last kind of property mentioned in the statute of 43 Eliz. as liable to the poor's rate, is saleable underwoods; by which is understood small coppice woods and young shoots from the stools of larger trees, which are occasionally thinned or taken down under the age of twenty years. The larger trees, and those of twenty years' growth and upwards, are purposely excepted out of the statute, with a view, as is generally thought, to encourage the planting of trees for shipbuilding, and prevent our being dependant, in time of war, on foreign timber.

Timber-trees are not rateable.

The manner of valuing underwood.

The legal rate due for saleable underwoods amounts to very little compared with that on land in cultivation. Where the growth of trees of a large size is encouraged, the underwood, being shaded and overtopped, is seldom worth more at twenty-

one years' growth than six or seven pounds an acre. The rate being laid in anticipation of the profits of the growing underwood, the price that it may sell for at the end of the term, deducting the expences of taking down, &c. and the interest of the money received at so distant a period, must be apportioned equally in all the years of its growth. The rate for the above amounts would then be only about 4*s*. per acre.

Fir-trees yield no underwood; when the trees are cut off, the stumps do not send up any young shoots: therefore a regular plantation of firs, intended to stand twenty years or upwards, is not rateable. But if there be a mixture of oak, ash, elm, hazel, or other trees forming underwood, or from which, when cut off, young shoots will grow, such underwood, if intended for sale, is rateable according to its progressive annual value.

Fir-trees are not underwood.

The court of King's Bench have determined, that by "saleable underwoods" is meant, "underwoods intended or destined for sale, in contra-distinction to such as are

Saleable underwoods.

to supply the landlord with estovers for fuel, and the other purposes of the estate," and that they are not to be rated in every twenty-first year, or in the year when they are taken down only, but that they are at all times rateable according to their annual increase in value. But, in practice, to value their improved state in each year, would be very troublesome as well as difficult; it is therefore more common to rate underwoods according to their average annual value for the whole term, which is computed from their supposed profit when they are expected to be saleable.

Estimate of underwood.

Suppose underwood be worth 8*l.* per acre at the end of twenty-one years; by the rule of compound interest, 3*l.* will make about 8*l.* in twenty-one years: therefore, at the end of the first year, the underwood is worth 3*l.* 3*s.*; at the end of the second year, about 3*l.* 6*s.* 2*d.*, and so on, increasing in arithmetical progression more rapidly as the sum is augmented. 3*l.* in ten years, at compound interest, amounts to about 4*l.* 16*s.*, and in eleven years, to 5*l.* 2*s.*; therefore the

average sum to reckon interest upon annually, for the rate on the whole term, is about *5l.*, which is *5s.* per acre per annum. The rate upon underwood must be laid according to the quality of the soil and the supposed value of the produce, which, of course, will vary with local circumstances.

Rateable underwood must yield a succession of profit.

In rating woods, it is necessary to bear in mind, that the statute mentions only "saleable underwoods;" by which is included such kind of brushwood, cordwood, stakes, bindings, hop-poles, or firewood, as grow spontaneously, or from the stool after the bole of a tree is severed, and which yield a succession of profit. Where larch and trees of the fir tribe are planted amongst other trees instead of underwood, and which are not intended to be cut down till the end of thirty years, it has been decided that such a wood is not rateable. The Court were of opinion that larches and firs are not underwood; and that if they might be termed underwood, yet they are not saleable underwood, in the meaning of the statute, which is construed to include no property

as rateable to the poor except such as yields a succession of profits.

Result of a trial on rating underwood.

The liability of woods to be taxed to the relief of the poor, is well described in the result of a trial in the King's Bench, before Lord Ellenborough, Chief Justice. His Lordship explained and decided the case as follows: — "This was an appeal against a poor's rate for the parish of Mirfield, in which the appellant, Henry Beaumont, Esq., was rated for some underwoods. The underwoods were such as are usually cut down once in twenty-one years; and in the year they are cut they produce profit, but in other years they are stated as producing none. At the time of the rate they were ten years' standing. The sessions thought they were not rateable, and therefore quashed the rate; but submitted the question to this Court, Whether they were liable to be rated every year, according to the average annual value thereof; or whether they should be rated then only when they are cut down and produce actual profit? Among the several descriptions of

persons whom the statute, 43 Eliz. c. 2., makes rateable, the occupier of saleable underwoods is one: and the question is, Whether they can be deemed saleable underwoods, except in the year when they are cut down? The word 'saleable' has not a very precise, definite meaning: it may mean, when they are in a fit state for sale, referring to the time when they are cut; or it may mean such as are intended or destined for sale, in contradiction to such as are to supply the land with estovers for fuel, and the other purposes of the estate. In the former of these cases, they would only be rateable in the year in which they are cut; in the latter, they would be rateable at all times; and we think, after full consideration of the subject, that the latter is the proper meaning. If they are rateable at all times, they will contribute, according to their value, in exact proportion with the rest of the property in the parish; but if they are rateable in that year only in which they are cut, the sum they will have to contribute may materially vary according to

the proportion their value bears in that year to the rateable property of the rest of the parish, and may be much greater or much less than the aggregate sum it would pay if it were rateable at all times. Suppose the underwoods in the year they are cut would produce a clear 1000*l.*; that the sum to be raised in the parish, *communibus annis*, is 100*l.*; and the value of the rest of the property in the parish is 980*l.*; if the underwoods be rated at 20*l.* a-year, which may be the rent they would produce upon a twenty-one year's lease, the rates would amount to two shillings in the pound, and the underwoods would contribute annually forty shillings. If they were rated only in the year they were cut, a shilling rate would then be sufficient, and they would contribute rather more than 50*l.* So far there would be no injustice; but suppose the rest of the parish to be worth 10,000*l.* the underwood would, supposing them as before to be rated at 20*l.*, contribute annually about four shillings; whereas, if rated in the year of cutting, they would contribute in

the proportion which 1000*l.* bears to 10,000*l.*; that is, the eleventh part of the whole rate of 100*l.*, which in money is 9*l.* and a fraction. As 50*l.*, then, is only twenty-five times forty shillings, and 9*l.* is is forty-five times four shillings, the disproportion of the two cases put is obvious, and the difference to all parties, whether the rate be annual, or in the year only, considerable. Again, suppose the annual value of the parish 6000*l.*, and the annual sum to be raised still 100*l.*, the rate will be four-pence in the pound, and the underwoods will pay annually 6*s.* 8*d.* upon their same supposed annual value of 20*l.*; whereas if they paid in their cutting year only, they would pay 14*l.* 5*s.* 8*d.*, which is above forty-two times 6*s.* 8*d.* Put the annual value of the parish at 500*l.*, the rates to raise 100*l.* must be four shillings in the pound; but, in the cutting year, they would only be 1*s.* 4*d.* The underwoods would contribute, in ordinary years, upon the last-mentioned assumption of the annual value of the rateable property in the parish, 4*l.* annually;

whereas in the cutting year they would contribute little less than twenty times that sum, viz. 75*l.* It is hardly necessary to state, that a mode of rating, which might produce such differences to the owner of this description of property, and to the parish, if he contributed only in the cutting year, cannot be the true rule; and the only other rule is a constant contribution, which will, at all times, fall equally upon this and every other species of property. The objection to this, in argument, is, that the property ought not to be rated until the produce of it has been severed from the land, and until it has supplied the occupier with the means of paying. But we are of opinion, that it is not necessary that any of the profits should have been actually reaped or taken from the property during the period for which the rate is made; but that the property is, at all times, rateable according to the improvement in its value, or in the rent which might fairly be expected from it. Instances continually occur in which the occupier is rated, though he

has derived no profit during the period for which the rate is made. A new tenant, upon an arable farm, reaps none of the produce till the autumn after his tenancy commenced, and yet he must pay up to that autumn according to the rent or value of the estate; he must pay before-hand for the future probable produce. His farm is constantly in a progressive state towards producing profit; and he pays for that progress. So underwoods are annually improving in value, and the rates the occupier pays are for that improvement. This may possibly be hard upon tenants for life; but if the laws have thrown this burden upon the property, they take it with that burden. We think, for the reasons we have mentioned, that the law has so thrown it; that the property is, at all times, liable to be rated whenever rates are made; and, consequently, that the order of sessions ought to be quashed, and the rate confirmed."

PERSONAL PROPERTY.

THE law passed for the relief of the poor in the 43 Eliz. enacts, that competent sums shall be raised "by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, and propriations of tithes, coal mines, or saleable underwoods in the parish, according to the ability of the parish." Here the statute particularly mentions lands, houses, tithes, coal mines, and saleable underwoods, which are all real property, but omits to name any species of personal property, such as stock in trade, goods, money, and the like. This omission has given rise to much doubt as to the original intention of the legislature in framing the act, whether any other description of property was meant to be taxed, except those which were introduced. But as it is

provided that every inhabitant shall be taxed according to his ability, personal property, and the means by which a man is enabled to keep a regular stock in trade, must constitute part of the ability contemplated by the act.

The ability of inhabitants arises in three ways.

A person's ability to maintain himself and family, and meet other payments and expences, arises in three ways: first, from the profits of real property; second, from the profits on capital employed in trade or other occupation; third, in the absence of capital, "what arises from the ingenuity of a man's head, or the work of his hands." The first is clearly rateable by the naming of real property, such as land and houses, in the statute. The second is included under the term, "ability of the parish." But the third, being personal labour, and dependant on a man's earnings, whether he be able to work or not, has never been a subject of rate. The judges have decided that the poor's rate is a personal tax, in respect of local, visible, real and personal property, and that the statute does not

mention the produce of labour, therefore it is not rateable. The law makes the poor's rate personal, by subjecting those persons, who are in arrear of assessments, to have their goods distrained and sold to make up the deficiency; and when a tenant leaves premises without paying his assessments, the succeeding tenant is, by law, obliged to pay them, and not the landlord; thereby continuing the tax with the possession and occupation, and not with the inheritance.

Poor rates are a personal tax.

The profits of personal labour are rateable when invested in real property; or if it be customary to rate personal property in the parish, the profits of personal labour or profession are liable to be rated as soon as converted into personal property. Thus, when a person saves money by ingenuity, labour, or profession, and with those savings enters into trade or the occupation of real property, he is immediately rateable according to his increased possession. The persons employed to make the rate cannot enter into the inquiry how property has

The proceeds of personal labour are rateable when converted into property.

been obtained, or accumulated, but must assess such property on an equal scale with similar property in the township.

Doubts on rating personal property.

The general question whether personal property be really rateable by law, in all cases, has not been fully determined: much depends upon the usage and custom of the place. Near two hundred years elapsed after the statute was enforced before it was attempted to rate personal property; and even at the present period it is rated in very few instances. This long omission has been thought strong evidence that the legislature never intended to lay the tax on personal property; but several cases have been tried, in which stock in trade and other personal property were decided to be rateable where they can be ascertained, and a mandamus has been granted to compel the justices to assess them.

It is usual in rating personal property only to include such as is visible.

In general, where personal property has ever been rated to the poor, the assessors have imposed the tax only on local, visible, personal property, such as can be ascertained without examining tradesmen's

books, or inquiring into the capital stock engaged in business. Inhabitants and rate-payers most commonly agree amongst themselves, when a new rate is determined upon, not to assess personal property, but to confine the rate to land and houses, and their appurtenances; laying a higher rate on buildings used in trade than on farm-buildings, to make up, in some measure, for tradesmen's stock in trade, which is their local ability. But in some townships, where the letter of the law is strictly followed, stock in trade is assessed; making, of course, considerable allowances for extraordinary risk in profits and losses, when compared with real property.

"Where personal property is rated, the assessment upon real and personal estate is subject to very different deductions; and therefore the particular nature of each subject assessed must be ascertained, in order to settle the deduction that is to be made from it."

Stock in trade.

It has been decided that a tradesman, clothier, shop-keeper, brewer, and mer-

chant, are rateable for their stock in trade, and that a butcher is rateable for capital employed in his business.

A weighing machine is liable to be rated for its profits; and carding and tumming machines are rateable according to their annual value, when let with a building. Machines.

The owner of a packet-boat is rateable for his profits in the parish where he resides, and where the boat is kept. Packet-boat.

Physicians, attorneys, or other professional men are not rateable for their fees, nor for the profits of their business. The profits of their professions do not arise from the possession of any description of property, but from personal exertion, which cannot be calculated upon; as a man may in future be without business, or unable, through indisposition, to attend. But the principal ground of exemption is, that professions and personal labour are not mentioned in the statute. For the same reason, captains in the navy, masters of merchant vessels, and merchants' clerks are not rateable for their salaries; but they, as well as Professional men.

all others, are rateable for any house or other real property they may occupy.

Farmer not rateable for stock.

A farmer is not rateable for his stock or implements; for one principle of rating is, that no property shall be rated twice. Now, the land being rated on which the cattle are kept, and on which the implements are used to raise the rateable profits of land, it would be a breach of this principle to include them in the assessment.

Furniture and money.

Household goods and furniture are not rateable; neither is money in the public funds or in government securities: for personal property, in order to be rateable, must be profitable, or consist in something which yields an annual or periodical return. The rate is to be laid on profits which are expected to be made in future, by judging, from enquiry and observation, of those profits which have been realized in similar cases and situations.

Personal propertynot rateable, unless it belong to its holder.

Personal property cannot be assessed unless it be the actual property of the possessor; for it is the ability of the inhabitant, not what he may happen to have in

his occupation, that constitutes his ability. There is this difference to be observed in rating real and personal property: the former is assessed on the occupier, without regard to his pecuniary ability; the latter cannot be properly rated until the possessor's debts are deducted from his capital stock in trade.

Must be profitable to be rateable.

On an appeal to the King's Bench, respecting the rating of personal property, it was decided, that besides being able to show that certain persons were in possession of stock in trade to a specified amount, the sessions should also state whether it produced profit, or was not liable to incumbrances equal in value to the property itself. The order was quashed for this defect. This decision shows the great difficulty of rating personal property.

Case tried on rating personal property.

"A case stated that certain persons were respectively possessed of visible stock in trade, and liable to be rated in respect thereof, if by law it was liable to be rated; that personal property was immemorially rated, and the rates occasionally collected

in the township down to 1796, and rated, but not collected, from thence to 1807. But the sums were nominal, having no relation to the actual value of the property; and since 1807, it was not rated at all. It was further stated, that evidence was given of the clear amount of the surplus of stock in trade or other personal property, in the instances appealed against; but the justices having added, that not being satisfied from the evidence that there was any surplus by which they could amend the rate, the court held, that visible property, such as stock in trade, merely as being visible, is not liable to be rated; it must also be productive; and the justices having found that it was not productive, or, which is the same thing, that it was not proved to be so, that finding concludes the question."

Difficulty of rating personal property.

Lord Mansfield, Chief Justice, was of opinion, that before personal property can be assessed, it is necessary to deduct from a man's possessions the amount of his debts, the maintenance of his family, and other unavoidable expences. It will easily be

conceived how difficult, if not impossible, it would be to ascertain the two latter; and it has never been decided that such a principle should be adopted in laying the rate.

Lord Kenyon, Chief Justice, was of opinion, that the most important question for inquiry was whether personal property produced profit, or was liable to incumbrances, equal in value to the property itself. No doubt, however, now exists of the general liability of personal property to the poor's rate; but the principles on which the mode of rating is to be grounded have never been clearly defined. In townships where it has been attempted to rate personal property, the original act for the relief of the poor, namely, the 43 Eliz., has been referred to, in order to learn how far it was liable; but the clause is so indefinitely expressed, that different constructions and usages have obtained in different parishes.

Lord Mansfield observed, that "the words of the statute are very loose, and very general, and they may be construed

into any latitude, even to make all a man has, and all a man gets, the measure of his ability: for truly and substantially it is so; but usage has explained it and narrowed it. I know nothing of any usage that says a man shall pay according to his ability, in the obvious common sense of the word — that is, all he gets or makes by his efforts or abilities. If this were the rule, every profession would be liable to be taxed for all they get upon an average. If we do not find it there, that is, in the usage, I know nothing in the words of the statute to prevent taxation being carried to that extent."

Reasons for not rating personal property.

On the whole, it may be observed, that the rating of personal property is very obnoxious to persons trading with fictitious capital, or others, who may not wish their private affairs to be known; and the system is capable of so much evasion and imposition, that it is seldom adopted. A tradesman would feel much annoyed on being questioned as to his capital stock employed, his debts, and the profits of his trade; all which it would be necessary to ascertain

before personal property could be equall rated. Besides, it may be readily conceived how difficult it would be to assess, with any degree of truth, the fluctuating profits of trade, and how easily the assessors might be imposed upon by erroneous statements.

Where personal property is taxed to the poor, it is usual to lay the rate on such as is visible, namely, the general stock of goods apparently kept for sale, and the tradesman's books and private ability are not noticed. Thus, those who would be benefited by a strict inquiry into private ability, prefer paying more than their share of the tax, rather than suffer their affairs to be exposed.

The poor-rate of the township of Hull is levied by local statute.

The township of Hull has a local statute for the relief of its poor, passed in the 9 & 10 W. 3., the provisions of which are very similar to the general act of the 43 Eliz. It directs that the poor-rate shall be levied by taxation of every inhabitant, and of all lands, houses, tithes impropriate, and appropriations of tithes, and all stocks

and estates, according to their respective worths and values.

Appeal against a rate by the Hull Dock Company.

The Hull Dock Company appealed against a rate in Michaelmas term, 5 Geo. 4. on the grounds that some persons were improperly omitted, and that a deduction ought to have been made from the sum at which the company was rated, to the extent of the poor-rate they were compellable to pay. This question was explained and decided by Chief Justice Abbott, as follows: —"The cases of persons improperly omitted were reduced to certain classes, namely, first, persons residing out of Hull, but occupying counting-houses or shops within the town of Hull, and having stock in trade, by which they made a specified profit; secondly, owners or part-owners of ships registered at the port of Hull, and trading to and from it, and making profit yearly, though the amount of such profit did not appear, such owners being in some instances resident in Hull, and in other instances not; and thirdly, a lessee of houses, underlet by him, at an advanced

rent, to persons who, on account of their poverty, were excused from paying their rates: and if any one of these three classes was improperly omitted, the rate was *pro tanto* wrong. The rate had originally omitted certain other persons resident in Hull, and having stock in trade there yielding profit; but it was conceded at the sessions that those persons ought to be added to the rate, and they were added accordingly. The case, therefore, as to omissions, is confined to the three sets of cases I have mentioned; and we are of opinion that the first and second class were liable to be rated, and were improperly omitted, but that the lessee in the third case was not liable, and that the omission, as to him, was right. It was urged upon the argument, that though the local act 9 & 10 W. 3. used different language from the 43 Eliz., yet that it ought to be construed as if the language in both had been the same; but the Court intimated their opinion to the contrary in the progress of the discussion, and they see no reason, upon further consideration, to

Stock in trade.

change that opinion. The 43 Eliz. uses language applicable generally to the kingdom at large; the 9 & 10 W. 3., having in its view the town of Hull only, would naturally suit its expressions to the state and circumstances of that place; and where we find a deviation from the language in the statute of Elizabeth, the presumption is, that the deviation was intended, and that a different system was thought better for Hull, and that the language proper for such a system was therefore used. We are therefore to consider it the intention of the statute 9 & 10 W. 3. that the rates should be raised by taxation of every inhabitant, and of all lands, houses, tithes impropriate, appropriations of tithes, and all stocks and estates within the town.

Personal property included in the statute.

"It was properly admitted by Mr. Coltman, upon the argument that stocks and estates must include all stock in trade and personal property. Stocks could have no other meaning; and estates, placed as it is in the clause, must extend to personal estates. This statute, therefore, has these

two effective words, which are not to be found in the statute of Elizabeth; and these two words remove from this case all distinction between residents and non-residents. Under the statute of Elizabeth, there was no word applicable to personal property, and it was only the ground of his being an inhabitant that the owner of personal property could be rated for that property; because there was no word in that statute to include him, except the word inhabitant. Under that statute, therefore, there was necessarily a distinction between residents and non-residents, because the resident would be rateable for his personalty within the place, the non-resident not. The distinction, however, under that statute, applied only to those kinds of property which the statute did not specify, for the occupier of lands, houses, &c., and whatever the statute enumerated was rateable, whether he was resident or not. In this statute, 9 & 10 W.3., what was defective in this respect in the statute of Eliz. was supplied. The rate is to be not only upon every

Inhabitant rateable.

inhabitant, but upon all stocks and estates. Lands, houses, and tithes, are all rateable according to the general principles of rating, whether the occupier be resident or not; and it is impossible upon this act to say that lands within the towns shall be rated, but that stocks and personalty within the town shall not. The stocks and personalty are not rateable elsewhere; they have all the benefit of the town; and there can be no reason, therefore, why, when there are words sufficient to include them, they should not be included. We are, therefore, of opinion, that the stock in trade, and ships yielding profit, are liable to

Ships at Hull.

be rated. It was pressed upon us in the argument, that as the appellants had not made out what was each ship's profits, they had not given to the sessions the means of amending the rate; and that the appeal, therefore, as to the ships, could not be supported; but besides that, this is evading the question, upon which it is obvious the sessions wished for the opinion of the Court: it is obviously grounded on a misappre-

hension of the duties of the parish officers, and of an appellant. Where property is rateable it is the duty of the officers to include it in the rate, and to take what means they can to ascertain its value. It is not for them to omit it altogether, and to cast upon the appellant what is properly their duty, the burden of proving its value. In the case of a single omission the difficulty upon the appellant might not be very great; but where all the property of a given description is omitted, the difficulty might be excessive. Before the 41 Geo. 3. the omission of a single individual who ought to have been included, compelled the sessions to quash the whole rate, and so as he was rateable at all, the extent to which he was rateable was not in question. The statute 41 Geo. 3. requires the sessions to amend or alter a rate appealed against, without quashing it; but with this proviso, that if the sessions shall think it necessary, for the purpose of giving relief to the appellant, to quash the rate, they may do so; and when a rate contains so many omissions, that it can

Power of sessions to amend or quash a rate.

hardly be expected of an appellant that he should have evidence to show the extent to which each person omitted ought to be rated, and where the investigation before the sessions would be likely to exhaust more time than they could reasonably be required to give up, we think it would not be an improper exercise of their discretion to quash the rate, and make the officers do in the end what they ought to have done at the beginning. Another answer is, that the sessions do not appear to us to have made this a ground upon which they wish for our opinion.

Poor people not rateable.

"As to the question of the lessee, whose under-tenants have been excused from poverty, the point was not very much pressed upon us in the argument, and we think the lessee not liable. The statute 9 & 10 W. 3. imposes the rate, indeed, upon the land, &c. without mentioning either occupier or owner. But as this is a burden commonly falling on the occupier, and rarely imposed upon the owner, we think the owner not compellable to bear it. The

owner fixes his rent upon the supposition that this is his tenant's burden; and without very clear words to show that such was the intention, we think we cannot make the landlord surety for the tenant.

Rate on the Dock Company to be on the same scale of value as other property.

"As to the question, whether the rate upon the company should be according to the full amount of their profits, without making any deduction for the sum they are liable to pay for poor-rates, we think the rate ought to be so made. This property is to be charged according to its worth and value, in like manner, and in the same proportion, as other real property is charged in the same rate. If other real property is charged only at three-fourths, or any other part of its value, after making deductions of the same nature, as those that have been made in the case of the company, the company ought to be charged in the same proportion. If other real property is charged according to the rack-rent actually paid by the occupier, and according to a rate so estimated, where the occupier is not a tenant at such rent, there will,

even in those cases, be a virtual allowance in respect of the poor-rate, such a rent being, in reality, a part only of the worth or value of the land; the whole worth or value is made up of what is paid in rent, and what in rates and other outgoings. Land intrinsically worth 40*l.* a-year, can only pay a rent of 30*l.*, if it is to pay 10*l.* per annum in other ways; and in estimating a rent, both landlord and tenant look to the value of the thing on the one hand, and to the outgoings on the other; and the outgoings must be deducted from the value before the rent can properly be fixed. Wherever, therefore, the rate is according to the rent, which is generally the case, an allowance is virtually made for the poor-rate; and if this rate is made according to the rents, the company should have the allowance. The mode of estimating the allowance is a different thing; that suggested in the case is clearly wrong; for if 2225*l.*, the present rate, is deducted from the 8900*l.*, the rate upon 6675*l.* only will leave part of the rateable proportion of

Mode of computing the rate.

8900*l.* free from rate; the allowance must be so made, that the sum, upon which the annual rates are made, may, with the amount of the rates, make up the 8900. This sum, according to the present rate, will be 7120*l.*, and the sum to be paid by the company will be 1780*l.*; the process of calculation will be adapted to the amount of the rate; it is sufficient for us to propound the rule, leaving the process of calculation to others.

Decision.

"Upon the whole, therefore, all persons omitted (except Nicholas Osborn) must be put upon the rate. The rate payable by the dock company must be reduced to 1780*l.*, and the case must be sent down to the sessions, that they may introduce the proper sums, if they find it practicable, or they may quash the rate if it be not.

"In the other case, the rate is 6*s.* 8*d.* in the pound; the sum upon which the rate is to be made will be 5487*l.* 15*s.*, and the rate will be 1829*l.* 5*s.*"

THE END.

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